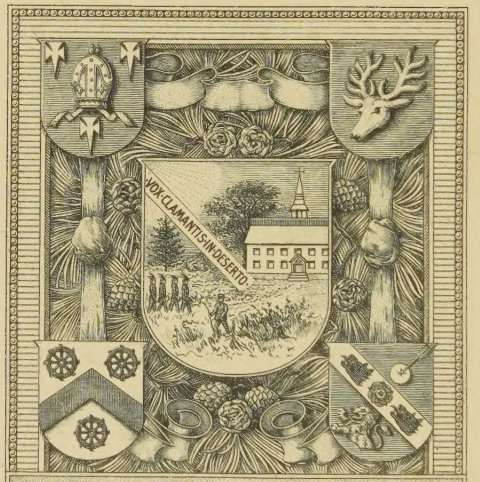

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LOCAL GOVERNMENT IN THE UNITED STATES

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LOCAL GOVERNMENT IN THE UNITED STATES

BY

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TO
MY FATHER
EDMUND J. JAMES

PREFACE

The attention of students of government has been repeatedly called to the fundamental importance of what is known as local government. Not only does this represent the aspect of government with which the average citizen is in the most continuous and conscious contact in the activities of his everyday life, but it is also, as has frequently been pointed out, that phase of government which is the least subject to rapid change. The familiar example of France, where many of the fundamental characteristics of the system of local government outlasted repeated revolutionary changes in the national government, serves as a common illustration of this fact.

It is somewhat surprising, therefore, in view of the acknowledged importance of the study of local government, that this field has been so generally neglected in the United States. One phase of local government, namely, the government of cities, has, it is true, received in the last twenty-five years very general attention from investigators, writers, and the general public. But the government of the county and its rural subdivisions has been all but ignored in this country.

Furthermore, one very important consideration in the study of local government in the United States has been quite overlooked in the literature of the subject — that consideration is the essential unity of the problem. City government is simply one aspect of local government, and it cannot be studied advantageously as an isolated phenomenon. It is as closely bound up in one way with the

problems of county government as it is in another with the problems of general state government. So also with the county, whose problems cannot be understood without reference to the government of the subdivisions, urban as well as rural, that lie within it. Local government in this country as a closely coördinated whole has not as yet received due attention. It is the purpose of this volume to supply that lack.

The general reader will find here the entire field of local government presented to him as a connected whole. The college teacher who views the subject of local government as a logical whole will find herein a comprehensive text for a course based on that conception. General reader and college student alike will find it easy, by the aid of the general and special references indicated in each chapter, to supplement this general survey with intensive study of particular phases of the subject.

Recognition is accorded in this work to the fundamental importance of a comparative point of view by devoting the first chapter to a brief survey of the systems of local government in England and France. The treatment is necessarily sketchy, but it is hoped that it will suffice to give the busy reader at least a background for viewing our own system in a comparative light. For the reader or student with time and inclination to enter more minutely into the matters treated in the introductory chapter ample references are given.

The greatest difficulty encountered in treating the subject of local government in the United States is, of course, that of describing in general terms a subject that presents almost infinite variations. There are forty-eight separate jurisdictions governing the organization and operation of local government, and within the states themselves local variations are so great as almost to defy general descrip-

tion. Nevertheless, it is believed that by emphasizing similarities, especially in tendencies, and by pointing out the most significant and important of the countless variations, a composite picture may result that will not be without value. It is inevitable, however, that under these conditions, especially in view of the continual modifications that are occurring from year to year, errors of fact may creep in, despite all the care that may be exercised. For such as may be found the author craves indulgence and requests aid in their rectification.

The author gratefully acknowledges valued aid received from Professor John A. Fairlie, not only indirectly through his pioneer work in the field of rural local government, *Local Government in Counties, Towns, and Villages,* but also directly through suggestions as to the arrangement of material in the present volume. He is also indebted to Sarah S. Edwards of the Bureau of Government Research of the University of Texas for the preparation of the Index and for assistance in reading the proofs.

HERMAN G. JAMES.

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LOCAL GOVERNMENT IN THE UNITED STATES

CHAPTER I

LOCAL GOVERNMENT IN ENGLAND AND FRANCE

What Is Local Government?—At the outset of a descriptive and critical discussion, such as this, it is well to come to some understanding as to the use of terms, particularly when those terms are employed in the title of the work and are actually subject to varying uses in the literature of the subject. This being the case with the term "local government" herein employed, the first matter for consideration will be the answer to the question, "What is local government?" or rather, in order not to appear dogmatic as to a point that may not be capable of absolute determination, "What is local government for the purposes of this discussion?"

We may define local government for the purposes of this presentation as the agencies and functions of government as established for the management of public affairs within an area or territory smaller than that of the state. With reference to a federal system like that of the United States, this word state will be taken to refer to the individual commonwealths that make up the federation. When speaking of unitary governments like that of France, for instance, the term "state government" will be synonymous with central or national government.

It will be noted that the definition of the term local government as set forth above denotes agencies of government *for* localities, not necessarily *of* or *by* localities. This distinction is important, because "local government" has not infrequently been used in this latter sense and identified in meaning with "local self-government." Now it so happens that in the United States virtually all territorial subdivisions of our states which have officers of government with a jurisdiction corresponding to the boundaries of those subdivisions do enjoy to a greater or less extent local self-government in that their officers are chosen either from or by the localities, or both, or exercise powers granted to the localities as such. But the question not merely of the proper extent of such powers and of the measure of local participation that should be granted, but also of the necessity or desirability of governmental subdivisions not having any of the attributes of local self-government, is one that merits careful consideration. It is obviously unwise, therefore, to confuse the term "local government" with the more restricted term "local self-government," which latter is rather the expression of a principle or political ideal than the designation of part or portion of the existing governmental system. As will appear below, there are in foreign countries agencies of government for lesser areas than that of the whole state which are not *of* or *by* the localities but simply *for* them.

Having determined what we mean by local government and before proceeding with the examination of local government as it is and the discussion of local government as we think it should be, the question naturally presents itself at the very outset of this inquiry "Why is local government?" As a mere matter of observation it can be determined that in every country of the civilized

world, from the largest to the smallest, there is found a system of local government. That is, in every state there are governmental subdivisions. Is this merely a coincidence, can it be explained on purely historical grounds, or is there some universal principle of government that demands subordinate governmental units within the state no matter what its size or history?

Although this question, as has been said, obtrudes itself at the very outset of our discussion, it can obviously not be answered satisfactorily until — if indeed it is capable of satisfactory answer as a general question of universal application at all — an examination of the origin and development as well as of the present status and problems of local government has been made. To conduct such an examination of the system of local government in the United States is the purpose of this work, but it will aid us in our undertaking if we precede our study of local government in the United States by a very brief presentation of the system of local government as developed in two of the leading countries of Europe, England and France. The English system of local government is of obvious interest and importance for purposes of comparison in connection with the study of the system in the United States, not only because historically it was the antecedent of the system found in the colonies and continued in the states, but also because it has the same background of law and general conceptions of liberty and government. The study of French local government, on the other hand, is of prime importance also because it represents the other main type of local administration which, in contradistinction to the English or Anglo-Saxon system may properly be designated the continental system, since virtually all the countries of continental Europe, as well as the South American countries,

and even Japan in the East, have followed the French type or system of local administration.

Local Government in England [1]

The Origin of Local Government in England.— In the earliest organized system of government in England concerning which we have definite information, the Anglo-Saxon kingdom, we find a system of local government well developed and exhibiting marked characteristics which were not without influence on the entire later history of the system in England and not without interesting points of similarity and contrast with the systems of other European countries.

The kingdom was divided for purposes of administration as early as the tenth century at least into shires, corresponding generally to the formerly independent kingdoms. The shires were, therefore, historical divisions with a certain homogeneity and local tradition. They were also democratic, regarded in the light of political conditions of that time, for there was a representative assembly called the shire-moot, in which all

[1] A comprehensive treatment of English local government can be found in Redlich and Hirst, *Local Government in England*, two vols. (London, 1903). Among briefer works may be mentioned Ashley, *English Local Government* (London, 1905); Odgers, *Local Government* (London, 1913); and Maxwell, *English Local Government* (London, 1900). The subject is treated also in special chapters in Lowell, *Government of England* (New York, 1919), II, Chaps. xxxviii–xlvi; Ashley, *Local and Central Government* (London, 1906), Chaps. i and v; and Goodnow, *Comparative Administrative Law* (New York, 1893), I, Book III, Chap. v. There are various works dealing especially with city government in Great Britain among which may be mentioned Shaw, *Municipal Government in Great Britain* (New York, 1898); and Howe, *The British City* (New York, 1907). A convenient treatment will be found in Munro, *The Government of European Cities* (New York, 1909), Chap. iii.

freemen had a voice, directly or through representatives. The shire-moot met twice a year and performed both legislative and judicial functions for the shire, which remained virtually autonomous as regards all matters of internal government. The central power, to which the freeman owed practically only the duties of military service and the repair of bridges and fortifications, was represented by the ealdorman, or earl, who was usually the chief land holder in the shire and who was appointed by the king. He presided over the shire-moot. With the growth of the power of the Church the bishops also attained to some importance in the governmental affairs of the shire. Later in the Saxon period an officer called the shire-reeve, or sheriff, was appointed as assistant to the earl, who as chief police, financial, and judicial officer of the crown gradually supplanted the latter.

Within the shire itself there were smaller governmental units which constituted the continuation of the system of local government in the separate kingdoms before they were united under one crown. These were the townships, the boroughs, and the hundreds. The townships and boroughs were the original communities, or aggregates of people, the former being a group of homesteads surrounded by a *tun* or hedge, with outlying fields and meadows, the latter a "burh" or fortified place consisting originally of the castle and courtyard of a nobleman under whose protection a group of freemen congregated in a community, with a ditch and mound as fortification.

In the township there existed a primary assembly of all freemen which managed all the affairs of the township, but had no judicial functions. This democratic institution was the real cradle of English liberty.

The township had its own officers, the reeve as finan-

cial officer, the pindar as manager of the commons, and the tithing man as peace officer.

The greater security of the boroughs, which became centers of trade and of craftmanship, led gradually to their increased size, importance, and powers as compared with the townships, which remained distinctly rural in character. There was a borough court or primary assembly, comprising all freemen who paid local taxes, which passed by-laws and, in the boroughs independent of a lord, elected the officers. The boroughs were originally coördinate with the townships but during the Saxon period many of them had been taken out from the jurisdiction of the hundred, which consisted of a group of townships.

These hundreds were principally areas for judicial administration and the preservation of the peace and were governed by a hundred court, composed of the reeve and four representatives from each township. The hundred was, as opposed to the townships, boroughs, and counties, an artificial rather than a natural governmental unit. At the head of the hundred was the chief constable elected by the hundred court.

Such was the system of local government found by William the Conqueror when he acquired the crown of England; a system characterized by democracy and local autonomy with but little interference by the central authorities.

The Development of Local Government in England.— Beginning with the Norman period a development towards centralization and a corresponding decrease in local autonomy began which in considerable measure upset the traditions of local government established in the Saxon period. Particularly was this true in the shires, now called counties, the territories of

the count who succeeded to the place of the earl. The shire-moot became the county court, and the sheriff the real administrative head of the county, virtually nothing being left to the control of the county court, which still continued, however, as a representative body. But instead of being democratic in composition, it became an aristocratic body consisting largely of the chief landholders. The system of county administration by the sheriff, whose office was changed under Edward the Third from a life position to annual tenure, continued until towards the end of the fourteenth century when the royal courts took over the criminal jurisdiction of the county courts, and the justices of the peace, appointed by the Crown, took over the administrative functions of the sheriff. In this way the county virtually ceased to be an area of local self-government, until the reform of 1888, as the administrative functions that successively developed were entrusted to these centrally appointed officers, completely independent of local control.

In the same way the Saxon hundred gradually diminished in importance, and although the hundred court continued to meet and was made responsible for the preservation of the peace in its jurisdiction, the establishment and development of the office of justices in the counties resulted in the decay and disappearance of the hundred as an area of local administration. The need of an administrative area within the county larger than the township was again recognized, however, in the reform legislation at the close of the nineteenth century.

The township, on the other hand, did not suffer an appreciable alteration under the Normans, by whom it was called *vill.* It continued as an essentially democratic unit of local government for the management of its own petty affairs, recognizing its obligation to pay

the royal dues to the Crown. But with the firm establishment of the feudal manor under the Plantagenets the township, or vill, began a struggle for its continued existence as a democratic unit of local self-government. The manor might include one or more vills, and the lord of the manor was virtual dictator, succeeding to the common lands of the township, entitled to military and personal services from the freemen of the manor, and holding the other peasants in serfdom, bound to the soil. The affairs of the manor were managed by the manorial court under the direction of the lord baron, or of his stewards, if the lord had jurisdiction over several manors, and the township meeting lost its powers, though it continued in existence.

This extinction of autonomy and democracy in the ultimate unit of government in the rural areas would undoubtedly have been complete except for the development of the parish during the same period, which parish was destined to become the successor of the township and to perpetuate the traditions of the early system of self-government. The parish was originally the area which supported a church and was presided over by the parish priest. It was frequently coextensive with the township, though sometimes a parish comprised a number of townships. The priest became the champion of the interests of the peasants over against the manorial lord and his stewards and revived the local democratic meeting in the parish meeting, held in the church over which the lord of the manor had no control.

In the long struggle between the feudal lords and the parishioners, led by the priest, the latter were ultimately successful and so preserved the tradition of local self-government. For the business of the parish meeting was not limited to ecclesiastical matters and the officers elected

by the parish meeting performed civil as well as ecclesiastical functions. While the powers of the feudal lords declined as those of the monarchy increased, the parish meeting increased in importance with the assumption of new activities as they developed. The parish assembly came to be called the vestry when its place of meeting was changed from the church itself to the vestry room.

The parishes continued to increase in importance as governmental units, especially after the Act of 1601 imposed upon them the duty of poor relief, and performed in addition to their former activities, functions both for the parish itself in the matter of assessment and collection of rates, highways, sanitation, burial grounds, etc., and for the central authorities as well in regard to voters' lists and other matters. The civil parish came to be distinct from the ecclesiastical parish in the course of later legislation but at the outset they were one. The later differentiation added another factor to the growing confusion of local government areas.

While the townships were thus preserved after the Norman Conquest as ultimate units of local self-government, and merged into the parishes which remain to-day as the smallest areas of local government, the boroughs were also undergoing a process of development and transformation. Under the Normans and Plantagenets the number of boroughs increased and they also grew in size, though only slowly. However, instead of being dependent on the lords near whose castles they grew up, they came generally to be immediately subordinate to the king from whom they acquired valuable privileges by charter grant, such as the compounding of the royal feudal dues, which freed the boroughs from the visits of the sheriff as royal financial officer, and the establish-

ment of their own courts free from the supervision of the sheriff as executive officer of the county courts.

For the performance of these functions as well as for the administration of borough property and the management of the borough markets and fairs the burgesses generally had the power of electing their own officers. The borough government at this time, therefore, continued as a democratic organization with a considerably enlarged measure of local autonomy. In the twelfth and thirteenth centuries boroughs continued to increase in number and size and also in powers, as such valuable privileges as that of guild merchant or monopoly in trade, and representation in Parliament were added by royal grant.

But with the thirteenth century the character of borough government changed from that of a direct democracy in which the burgesses elected their own officers in general meeting, to government by a council, mayor, and aldermen who, at first chosen by all the burgesses, gradually tended to become self-perpetuating bodies. Thus, while the importance of the boroughs as governmental units increased, their democratic character diminished; until by the close of the fifteenth century the typical English boroughs were close corporations. Furthermore, as the struggle between the Crown and Parliament became more and more acute the King, in order to control the representatives sent to Parliament by the boroughs, granted to them charters of incorporation, naming the persons in whom the powers of government should be vested, and giving them the right to choose their successors. By these means the system of undemocratic borough government was firmly established and it was not until the reform legislation of the nineteenth century that it was essentially altered.

It is not within the scope of this treatment to trace the various developments that occurred in the English system of local government during the centuries between the close of the Middle Ages and the present time, especially as the general scheme indicated above was not materially changed until the nineteenth century, which saw thoroughgoing reforms in the whole field of local government. The scope of these reforms and their consequences, therefore, will be briefly considered at this point. It is important to note at the outset, however, that these reforms waited upon the reform of Parliament itself in the direction of greater democracy of representation, a reform begun by the Act of 1832 and continued in the later franchise acts.

The first important measure was passed in 1834 and related to the administration of poor relief, which, in the hands of the parishes and under the direction of the justices of the peace, had degenerated into a deplorable condition. By this act a new administrative division was created, the poor-law union, comprising a number of poor-law parishes and having its own representative body operating under the strictest supervision and direction of a central administrative board; the first instance in the modern period in England of a strong central administrative supervision over the acts of the subordinate divisions, which had come to be practically free from adequate supervision.

The next important measure was the Municipal Corporations Act of 1835 which did away with the old undemocratic, corrupt, inefficient, and uncontrolled borough government. Although the organs of city government were not altered in name, they were now elected on a relatively democratic basis. By successive acts new powers were conferred on the boroughs, both individ-

ually and by general laws, powers which it would not have been expedient to confer upon the unreformed boroughs, and which were exercised under an increasingly comprehensive system of central administrative control. By this legislation the peculiar needs of cities as distinct from rural areas were recognized and accorded special consideration, the various laws being codified in the Municipal Corporations Consolidation Act of 1882. This Act, supplemented by later legislation, comprises the general municipal code for English boroughs, in addition to which there are countless acts dealing with individual municipalities.

The parish, deprived by the Act of 1834 of its chief local function, the administration of poor relief, as well as of other activities that were one by one conferred upon newly constituted authorities, gradually sank into insignificance and declined into an area for taxation and electoral purposes only. Not until 1894, by the passage of the Local Government Act, did the parish again become the primary unit of rural local government. As a unit of urban government it had lost its significance even earlier and as it was not needed there it was not revived.

Characteristic of the nineteenth century legislation with regard to rural local government in England was the plan of meeting each new governmental need as it arose by the creation of new units instead of entrusting the new functions to existing agencies. The hundred had disappeared as a governmental unit long before but in its place there were constituted successively highway districts, conservancy districts, health districts, improvement districts, burial districts, school districts, and others, each with its local authority and each an area independent of and cutting across all existing boundaries. Not until the Local Government Acts of 1888 and

1894 was a serious attempt made to straighten out this tangle of local areas, an attempt which has not completely succeeded even to the present day.

The Act of 1888 reconstituted the whole system of county government and provided the same general scheme of government for the county as had been established for the boroughs in 1835, namely a representative council elected on a democratic basis for the administration of all county affairs. By the Act of 1894 new county divisions were created called county districts to which were entrusted a great part of the powers that had been conferred upon the special authorities previously created. These special authorities thereupon ceased for the most part to exist.

During this period, furthermore, the establishment of central authorities with powers of supervision and control over local governments continued. In 1848 a General Board of Health was created with functions relating to the administration of public health similar to those of the Poor Law Board in the field of poor relief. Though this Board was subsequently discontinued and its functions divided between the Home Office and the Privy Council, its powers, together with those of the Poor Law Board plus a number of others, were concentrated by Act of 1871 in the hands of the newly created Local Government Board. In 1862 the Board of Trade had been established to which an increasing number of administrative powers affecting local governments have been gradually granted. In 1889 the Board of Agriculture was established, and in 1900 the Board of Education was set up as an independent central authority with administrative control over local authorities in matters affecting public education. In 1919 the Ministry of Health was created superseding the Local Government Board,

taking over all its functions and those of the other ministries relating to public health.

Present Characteristics of English Local Government.— Having traced very briefly the principal developments in the history of local government in England we can now devote some attention to a survey of the system as it exists to-day.

The County.— In the first place it is to be remarked that there are in England and Wales two different kinds of counties, the ancient counties and the administrative counties. The ancient counties, of which there are 52, are the parliamentary constituencies, and militia and judicial districts. The justices of the peace who hold commissions for the area of these counties, although stripped of most of the administrative powers which they exercised until the Act of 1888 was passed, still perform some administrative acts in petty, special, and quarter sessions, such as granting exemption from vaccination, granting public-house licenses, licenses for private asylums and inebriate homes, appointing visitors of prisons, administering the Act for the reduction of liquor licenses by compensation, and sharing in the control of the county police. Otherwise these ancient geographical counties with their centrally appointed Lord Lieutenant and Sheriff need not concern us here as they are not the real units of government.

The administrative counties, of which there are sixty-two, including the County of London, are governmentally distinct areas, though six of them possess the same boundaries as the ancient counties of the same name and the majority of them are very nearly identical. The larger number of administrative counties is due to the division of some of the ancient counties into two or more administrative counties. Hence it is true in the main

of the administrative counties to-day that they are historical areas with a community of traditions and sentiment.

In addition to and outside of these administrative counties are those boroughs which have been constituted counties by themselves, now some seventy-five in number, which normally include all boroughs having a population of more than fifty thousand. As these boroughs use the regular borough authorities for the performance of all their functions they will be considered under the head of boroughs. This plan of constituting the larger cities independent counties is, however, worth emphasizing at this place because of its bearing on the question of adopting a similar plan in the United States which, as will be seen, is one of the newer tendencies in our local government.

The administrative counties are by no means alike either in area or population for they vary in size from a little over a hundred square miles to nearly two thousand square miles, and from a population of a few thousand to a population of around five million. The average area and population are about a thousand square miles and three hundred thousand persons, respectively. They constitute, therefore, very considerable units of government, viewed from either standpoint.

In each county there is a county council in which are centered all the governmental powers of the county. This council varies in size according to the population of the county, from about thirty to more than a hundred and thirty, and is elected by single member wards, or districts, on a democratic basis. The councilors are elected for three years, all going out of office together. The councilors in turn choose a number of aldermen equal to one-third of the number of councilors, who hold

office for six years, one-half being elected every three years. The aldermen are in the same position as the popularly elected councilors so far as powers are concerned.

The council appoints all necessary administrative officers except the county clerk and the chief constable, who are chosen by a joint committee of the council and of the justices of the peace of the county. The council selects its own chairman for the period of a year, with re-elections the general rule, and the actual work of the council is done principally through committees, as the council meets regularly only four times a year, chiefly because of the difficulty of bringing together the widely scattered members. The law prescribes committees on finance, education, and asylums, in addition to the joint committee on police mentioned above. The committees on finance and on police enjoy by law certain independent powers and the other committees can be and usually are entrusted with large powers of independent action, except as regards the making of rates and loans. All members of the council, including aldermen and mayor, serve without pay. Perhaps the most striking feature of the organization of the county government in England is the fact that there is no executive head of the county, the chairman having no legal powers greater than those of the ordinary members of the council.

The powers of the county councils are very extensive, they having fallen heir to the administrative powers of the justices of the peace, and include both mandatory and permissive powers. The county is the highway authority for the main roads and county bridges. It may construct or assist light railways. It is the education authority and as such must insure the provision of sufficient elementary education and may also supply or aid the pro-

vision of higher education. It has large sanitary powers with regard to pure foods and drugs, diseases of animals, and river pollution. It takes care of county property and institutions and may establish hospitals, asylums, reformatories, and industrial schools. It also grants certain licenses and registers scientific, charitable, and religious societies. It has the power to enact by-laws applicable outside the limits of the boroughs.

In addition to these powers of direct action the county acts as an important supervisory authority over some of the subordinate areas. This power is greatest over the parishes, covering such matters as the approval of loans, orders for the compulsory purchase of land, and changes in boundaries. Over the county districts the council has the power of compelling action under the sanitation acts and in the matter of preventing obstructions of public rights of way. Over the non-county borough, the powers of the county are slight, the boroughs being, however, part of the county for taxation and judicial purposes and being represented on the council. But under the Act of 1888 the Local Government Board could transfer to the county councils the powers of the central authorities over local affairs, which would tremendously increase the importance of the county. This has not, however, been done to any extent as yet, the non-county boroughs and urban districts being unalterably opposed to any such action. Of course the county boroughs are by definition not subject to control by any administrative county.

The above powers conferred on counties by general laws are supplemented by special powers granted to individual counties by private bill legislation so that the various counties may differ considerably among themselves as to the extent of powers and functions over and above those enumerated.

For the performance of all of these activities the county needs ever increasing funds. The income of the county comes from a number of different sources, including fines; income from property; grants from the National Exchequer Contribution Account for specific purposes, such as police, health, and secondary education; and county rates. The last named constitute by far the most important source of current income and are collected *pro rata* from the parishes on the basis of their property valuations, or by special rates on such portions of the county as are specially benefited by an undertaking. In collecting these rates the county makes use of the officers of the poor-law unions and parishes.

For permanent improvements the county is authorized to borrow money, not in excess of one-tenth of the rateable value and for a period not exceeding thirty years. But every loan must be approved by the Local Government Board, since 1919 the Ministry of Health, as must those of all other local areas. In the expenditure of its funds the county must act through its finance committee which, as has been seen, has independent powers for the purpose of control as to the legality of the proposed expenditure. The accounts of the county, like those of the other local areas except the boroughs, are subject to a careful and effective audit by officers of the Ministry of Health.[2]

[2] In 1919 Parliament created, as part of its reconstruction program, a new ministry called the Ministry of Health. This new government department took the place of the Local Government Board and, although it was created for the specific purpose of handling all matters connected with public health, it was endowed with all the powers and functions of the Local Government Board, not merely those relating to the administrative direction and supervision of the areas of local government in the matter of public health. It is the intention of the Government to transfer the other powers to other departments of government, but as that will be a slow

County Subdivisions.—There are now six different classes of regular local government areas within the administrative county; boroughs, urban districts, rural districts, poor-law unions, rural parishes, and urban parishes. The special units still in existence are relatively few and steadily diminishing in relative importance.

Urban Parishes and Poor-Law Unions.— The urban parishes, that is, those in the boroughs and urban districts, are virtually areas merely for the administration of poor relief, and even for that purpose they are insignificant, as the real work of poor relief is done by the officers of the poor-law union under the strictest direction of the Ministry of Health. These areas continue, therefore, as units for a single purpose and bear no necessary relations to the boundaries of the other areas. For that reason they will not be considered further in this brief presentation, but it is important to note that they constitute one of the distinctive features of the English system in relation to a phase of local administration which has been but imperfectly developed in the United States up to the present.[3] They have a larger significance, however, in that the assessment of the poor rate is commonly used as the basis for assessing all other local rates and the poor-law officers in the parishes and poor-law unions are frequently made responsible for the collection of these other rates, as in the case of the county rate noted above.

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and gradual process the Ministry of Health is for the present at least the successor of the Local Government Board in all respects and will, therefore, be referred to herein as such, it being kept in mind that gradually all the powers of supervision over local authorities not connected with public health will be transferred from the Ministry of Health to other departments not yet determined.

[3] For convenient brief discussions of the subject of poor law administration in England see Odgers, *op. cit.*, Chap. v, and Ashley, *Local and Central Government*, pp. 52–60.

Rural Parishes.—The rural parish, then, is the smallest unit of general local government. But even rural parishes are by no means uniform in population or area nor are they necessarily rural in character, for by rural parish is meant simply one which is not within a borough or an urban district. A considerable number of rural parishes in fact are as populous and densely settled as some of the boroughs. But of the thirteen thousand parishes in England about ninety per cent have a population of less than a thousand and some two thousand have fewer than a hundred inhabitants each. For purposes of government the parishes are divided into those with a population of more than three hundred which have a parish council chosen by the parochial electors in parish meeting, and those with a population of less than three hundred which normally have only a primary assembly. But parishes having between a hundred and three hundred persons may provide for councils, and even the smallest parishes may establish them with the consent of the county council. Parish councils vary in size from five to fifteen members.

Parish meetings consisting of the parochial electors and including women whether married or not are held at least once a year and where there is a council this is usually elected for a three-year period. The officers of the parish, aside from the chairman of the parish meeting, are the overseers of the poor, unpaid officers elected annually by the meeting or council. The overseers make and levy the poor rate, give relief in cases of immediate urgency, prepare the jury list, and make out the lists of voters for parliamentary and local elections.

The scope of powers of the parishes is not inconsiderable for it was intended to make them really vital areas of self-government by granting them a wide range of

powers by permissive or so-called adoptive acts. So the acquisition of rights of way, control over foot-paths, management of parish property, the granting of allotments, the provision of recreation facilities such as parks, baths, and wash-houses, the provision of lighting, fire protection, and burial grounds, and the inspection of sanitary conditions for report to the district council, are all within the powers accorded to the parishes. In addition the parish appoints trustees for the civil charities and representatives on the boards of the public elementary schools. But the income of the parish is very limited, the general parish rate being limited to sixpence in the pound, and the special rates allowed under the adoptive acts being insufficient in most cases for the purposes. Hence the actual scope of activities of the rural parish has been very restricted, and in spite of the democratic nature of the local government it has aroused little interest.

County Districts.— The Act of 1888 which established the parishes and counties as modern local-government areas provided also that there should be county districts between the parishes and the counties. It was the Act of 1894, however, which defined the districts and determined their organization and powers. By the Public Health Act of 1872 the country was divided into urban and rural sanitary districts and these were taken as the basis for the new county districts for general purposes of local administration.

The rural districts, nearly seven hundred in number, are usually coterminous with the rural poor-law unions, which latter were indeed the areas entrusted with rural sanitary administration by the Act of 1872. In these cases of territorial identity, the governing body of the rural district is identical in personnel with the governing body of the union, the rural district council acting

also as the board of poor-law guardians. But their legal powers and functions are distinct for the two purposes and where a poor-law union is composed of both rural and urban districts only the rural portions of the union have the same persons as district councilors and poor-law guardians.

The governing body of the rural district is the district council, composed of members elected for three years by the parochial electors in each parish, one-third of the councilors retiring each year.

The chief function of the rural districts is the care of public health and for that purpose they are vested with large powers including the provision of sewers and methods of sewage disposal, drainage, and water supply. They are in fact compelled to see that every house is properly provided with drainage and pure water. The rural district council is charged with the prevention and abatement of nuisances. For these purposes it must appoint a medical officer of health and an inspector of nuisances, who are charged also with the inspection of the food supply. In addition to these compulsory functions with regard to public health the district councils may adopt further powers under the various health acts, such as the Infectious Disease Act, etc., and with the approval of the Ministry of Health, which exercises a close supervision over the rural districts in matters of public health, rural districts may receive all of the powers enjoyed by the urban districts under the public health acts.

Besides being the chief sanitary authority for rural areas, the rural district is also an important highway authority. All highways except the main roads are in charge of the district council which is charged with the duties of construction and maintenance, and the prevention of obstructions and encroachments thereon.

Third, the rural district may provide allotments and workingmen's houses and, with the approval of the county council, aid persons in maintaining rights of common within the district.

With the approval of the Ministry of Health the rural district council may adopt by-laws for the carrying out of its powers, and many of the licensing powers formerly entrusted to the justices of the peace have also been transferred to the district councils.

Finally, additional powers may be conferred upon individual districts by provisional order of the Ministry of Health. But the conservative agricultural districts have not been inclined to use their full powers.

For meeting the expenses of district administration the rural district council may levy either private improvement rates, special rates, or general rates. Private improvement rates may be levied upon individuals for improvements benefiting their property alone. Special rates are levied upon the parish or parishes benefited by improvements, and the general rate is collected from all the parishes *pro rata* for general district purposes. Agricultural land is assessed at only one-fourth. The districts may borrow money for permanent improvements with the approval of the Ministry of Health, repayable within sixty years.

The Ministry of Health exercises very considerable control over the rural districts, not only as regards the approval of by-laws and of loans noted above, but also in that it may compel the performance of the obligatory functions or itself have the work done and charge it to the district. The finances of the district councils are, moreover, subject to the strictest audit by agents of the Ministry of Health.

The urban districts of to-day, of which there are over

eight hundred, are, like the rural districts, the successors of the sanitary districts into which the country was divided by the Act of 1872. Although designated *urban* districts they are not necessarily really urban in character for a number of them are very small in population and not more densely settled than are a good many of the rural districts.

The governmental organization for the urban district is virtually the same as for the rural district, that is, a district council elected for three years by the parochial electors, one-third of the council retiring each year. But in the urban districts the district councilors do not act as poor-law guardians. The council meets once a month.

The powers of the urban district include in general all the powers granted to rural districts plus most of those granted to the boroughs. So, in addition to the comprehensive sanitary functions which were conferred upon the urban sanitary districts established by the Act of 1872 and later public health acts with regard to sewers, drains, water supply, housing, food supply, infectious diseases, nuisances, the establishment of hospitals, etc., urban districts have more important highway powers, having control over all streets and highways, including such of the main roads as they wish to control themselves rather than leave to the county. Furthermore, the urban districts have large powers with regard to the establishment of all manner of recreation facilities, and of public utilities of various kinds, including gas works, electric-light plants, markets, tramways, etc. In urban districts having more than twenty thousand people the district council is the local education authority for elementary education.

The urban district is under the control of the Ministry

of Health as regards the performance of obligatory duties under the public health acts, its by-laws must be approved and its loans sanctioned by the same authority, while its accounts are subjected to the same careful audit as those of the rural districts. But the financial resources of the urban districts are considerably greater than those of the rural districts not only because the lands have a greater rateable value but also because the proportion of agricultural land, which can be rated at only one-fourth its value, is much less. This fact, combined with the greater needs and progressiveness of the urban centers, has led to a much greater activity under the adoptive or permissive powers which have been accorded to both kinds of county districts. Thus, although the legal and governmental status of the urban districts is very similar to that of the rural districts, the scope of activities, at least of the more densely populated urban districts, approaches more nearly that of the boroughs than that of the rural districts.

Boroughs.— As has already been pointed out there are two general classes of boroughs, county boroughs and non-county boroughs, the difference between the two consisting in the fact that the former are not within any administrative county and, therefore, perform all the functions entrusted to the county in addition to those granted to the boroughs. But as the organs of government are the same in both kinds of boroughs and we have already surveyed the functions of the county we shall consider here only the non-county, or municipal, boroughs, as they are called. There are some general differences between boroughs even within the class of non-county boroughs but as these are either merely formal as in the case of certain boroughs designated "cities," or relate primarily to their judicial powers, it is not necessary to

consider them here. Boroughs with a population of less than ten thousand have, however, as will be seen, somewhat less extensive powers in certain respects.

The Act of 1835 applied to 178 boroughs, but the number has since doubled, new charters being obtainable upon petition of a majority of the ratepayers of the locality after an elaborate administrative and, in case the petition is opposed, a *quasi*-judicial proceeding before a special committee of Parliament. No definite population is required for the grant of a borough charter and as a matter of fact there are the greatest variations in the populations of English boroughs, ranging all the way from a thousand or two to a million people.

The Municipal Corporations Acts of 1835 and 1882 prescribed the form of organization for the boroughs. In each borough there is elected a council varying in size from nine to one hundred and three members, according to the provisions of the charter. This council comprises councilors, elected for three years by the borough electors, one-third retiring every year, a number of aldermen equal to one-third of the number of councilors and chosen by them for a term of six years, and a mayor, elected annually by the council. The aldermen enjoy no special powers and even the mayor enjoys a ceremonial rather than a legal superiority over the other members of the council. All these officers serve without pay, though the mayor may receive a remuneration.

The borough franchise is still somewhat less democratic than that of the other units of local government, being based upon some connection with rateable property either as occupier or owner. But with the passage of the Franchise Bill of 1918 the borough suffrage was extended to include female parliamentary electors.

The Municipal Corporations Acts did not to any great

extent determine the powers of the boroughs, though the control over local police, in boroughs with a population of more than ten thousand, was accorded to them in this way. Perhaps the most important functions of the borough are those resulting from its being designated the local sanitary authority within its jurisdiction and as such exercising the powers conferred by the various Public Health Acts, the general scope of which has already been noted in connection with the county districts. This includes such functions as the provisions of drainage and sewerage, water supply, lighting, street improvements, housing, markets, cemeteries, and hospitals, as well as sanitary control over the food supply, the prevention and abatement of nuisances, and the control of contagious diseases. Under the adoptive acts the boroughs may provide all sorts of recreation facilities and public utilities and by private bill legislation individual boroughs have greatly increased the scope of their activities. This results in the greatest divergencies in the powers actually exercised by boroughs. By the Education Act of 1902 the borough council in boroughs with a population of over ten thousand, is the local education authority for purposes of elementary education.

The council performs legislative functions in the passage of by-laws for the good rule and government of the borough, which may be disallowed by the Ministry of Health if in excess of the borough powers. The administrative work of the council is carried on through the agency of committees, some of which are obligatory by law, such as the watch or police committee, and the education committee, but, unlike the committees of the county council, the action of these committees must receive the sanction of the council. Although the council is required to have but four meetings a year, it does, in the sizeable

boroughs at least, meet as often as once a month or even more frequently.

The council appoints the professional administrative officers and employees, with the exception of one auditor who is popularly elected, the town clerk and the treasurer being required by law. All these officials of the borough, as is also the case with the paid officials of the other units of local government, though subject to removal by the appointing authority, hold office during good behavior and are not affected by changes in the political make-up of the appointing body.

For the expenses of borough government the council has available the borough fund comprising the income from borough property, fees, fines, etc., and to supplement that it may levy special and general rates assessed upon the parishes usually on the basis of the poor-rate valuation and collected by the overseers of each parish. The borough also receives aid out of the Exchequer Contribution Account for police, sanitation, and education. For permanent improvements the borough may make loans but only under specified conditions as to term and manner of repayment and with the approval of one or more of the central administrative authorities, unless, as is not infrequently the case, application is had directly to Parliament for authority by private bill legislation. With the development of municipal trading or the municipal ownership and operation of public utilities by the boroughs the indebtedness of English boroughs has increased of late years to an enormous extent, offset, however, in large part by the net income from productive undertakings.

The boroughs are in general more free from the control of the central administrative authorities, except to the extent already noted, than are the other units of local

government. Particularly is this true in the matter of accounts, for the Ministry of Health possesses no power of audit and control over the borough accounts. But the central authority may require financial statements from the boroughs in a prescribed form. Though its actual powers, like those of the other central authorities having supervision over the activities of local government areas, are in the case of boroughs chiefly negative, nevertheless by reason of its ability to aid the borough through its staff of experts the Board exercises a positive influence of no mean importance.

Central Administrative Control.— No survey of English local government, no matter how brief, would be at all adequate without a word concerning the system of central administrative control, which is one of the striking developments of the last century in England and which is of particular interest and significance for the study of local government in the United States because of the similarity of historical background and governmental and legal traditions of the two countries. As attention has already been called to many of the incidents of this control in the discussion of the various units of local government and their functions, a brief summary of the system of control will suffice at this point.

There are five central administrative departments which exercise some measure of control over the units of local government described above. These are the Board of Agriculture and Fisheries, the Board of Trade, the Board of Education, the Home Office, and, by far the most important of all, the Ministry of Health.[4] It may be mentioned here also that the Treasury exercises some control through its approval or disapproval of proposed local loans for the erection of public buildings.

[4] See note on the new Ministry of Health, p. 18.

The Board of Agriculture and Fisheries is the least important of the five departments as an agency of control over the units of local government, for its jurisdiction relates chiefly to the control of diseases of animals, the destruction of insects, the preservation of fisheries, the control of commons, the improvement of land, and the regulation of markets.

The Board of Trade exercises control over the local bodies in connection with proposals for the public undertaking of public utilities such as water supplies, gas and electric lighting and power, tramways, etc., the conduct of which it supervises and requires reports on. In this connection its powers are in a measure coördinate with those of the Ministry of Health, since almost all of these undertakings can be financed only by the making of loans, that, as has been seen, require in every case the assent of this authority. Local ordinances under the Weights and Measures Act require the approval of the Board of Trade.

The Board of Education supervises and directs the system of elementary public education, as well as science and art schools and normal schools. It advises in regard to public higher education with the local education authorities, inspects their systems on request and distributes on the basis of its findings the subsidies contributed by the national government.

The Home Office exercises a supervision over the police systems of the local areas which is particularly worthy of notice as it deals in an ingenious manner with a problem of local government that confronts us in the United States at the present time and has been the source of considerable difficulty. The continental system of police administration, as will be seen in the discussion of the French system, has been to keep the local police an arm

of state administration with little local autonomy. The English tradition has been, however, for hundreds of years, so strongly opposed to this plan as constituting a serious infringement of the principle of local self-government, that a scheme of police administration which would give to the central authorities even such a measure of power as is exercised in matters of poor relief would not be acceptable. Yet the need of some measure of central supervision was obvious, as complete local independence in this important regard might have serious consequences. The plan adopted, therefore, represents a middle course between these two extremes. The national treasury grants subventions in aid of the support of those local police forces which measure up to a minimum standard of efficiency set up by the Home Office and ascertained by its inspectors. As this aid amounts to about one-half the expense of maintaining the force the local areas are only too glad to avail themselves of this means of keeping down the local rates, since it is more economical to bear half the expense of an efficient police than the whole expense of an inefficient system, the ratepayers themselves, furthermore, being directly interested in satisfactory police protection. Hence, although the Home Office has no legal authority to dictate to the local area concerning police administration, it does acquire, through its power to withhold the treasury grants, the actual power of inspection and supervision and of insisting on minimum standards of efficiency. This power could obviously be used to force the standards of efficiency higher and higher, at least to the point where one-half the cost of maintaining a police force up to the standards required by the Home Office would equal the entire cost of maintaining a less efficient force in a condition satisfactory to the local ratepayers. As a matter of fact this policy

has not been pursued by the Home Office, for the standards set are not especially high, but the scheme provides the possibility of insuring a large measure of central control without arousing local sentiment against central interference. The same principle is applied to some extent in other matters entrusted to the local authorities, as for instance in the matter of aid for education, but in the case of the police it represents the only means of insuring central supervision.

Aside from the inspection of the police force the Home Office is also charged with the approval of police by-laws made by the local authorities, as also with the supervision of the powers granted to local authorities under the Factory Acts.

The Ministry of Health in succeeding to the position of the Local Government Board is, for the time being at least, the most important of the central departments, though with the proposed transfer of its functions not connected with the public health to other departments it will lose in relative importance. Most of the powers of the new Ministry of Health as an organ of central administrative supervision and control have already been enumerated in the discussion of the powers and activities of the local areas and need, therefore, be only briefly classified here. They fall conveniently into five groups as follows: legislative, advisory, reporting, administrative, and financial.

Under the head of legislative powers fall the issuance of orders, rules, and regulations, particularly plenary in regard to poor relief and public health, subject to disallowance by Parliament, the King in Council, or, in case of excess of powers, by the courts. The Ministry of Health has also large powers over local boundaries and the creation of new areas, especially as regards parishes,

poor-law unions, and county districts. In a negative way it can disallow or amend local by-laws relating to poor relief and public health matters, and in this connection it prepares model ordinances which the local authorities find it expedient to adopt in order to avoid all questions of validity.

Under the head of advisory powers the central authorities offer advice, solicited or unsolicited, to the local authorities, who find the expert services of the staff maintained by the central department extremely helpful. On the other hand, the department renders advice to Parliament on matters of local legislation, particularly in regard to private bill legislation when the local areas seek special powers from Parliament to undertake activities which the department has no power to authorize, or on which it has not been consulted if within its powers of issuing provisional orders.

Of considerable importance are the powers of the department to require and to publish reports dealing with all phases of activity of the local areas, which, compiled in the annual reports, constitute a mine of information for the study of local government.

Under the head of administrative powers fall the powers of the central department to compel action by the local authorities, especially in the fields of poor relief and sanitation, making its comprehensive powers of inspection and supervision effective.

Finally, under the head of financial powers fall the powers already noted of approving every proposal for a loan by the local authorities, including the specification of conditions of interest and repayment, and the power of audit, involving the right of disallowance of improper expenditures which the department exercises over all local expenditures except those of the boroughs. This

power although, or perhaps because, one of the most effective of the powers of control is perhaps the one which has aroused the greatest feeling of opposition on the part of the local authorities to the central department. Its extension to the boroughs, although repeatedly contemplated, has aroused the strongest and so far the successful opposition of those authorities.

These powers, which to a more limited extent are accorded also to the other central departments within their jurisdiction, are exercised under the general direction of a Cabinet Minister and his parliamentary secretary and under the immediate direction of a permanent secretary aided by a large staff of permanent expert officials. This is in accordance with the general plan of public administration found under the English system of parliamentary government, the so-called boards being boards in name only, the responsibility centering in the Cabinet official who alone has adequate powers of action, subject, of course, to the ultimate direction of the Premier.

Before summarizing very briefly the chief features of the English system of local government as outlined in the preceding pages it is necessary to point out that the system of central administrative supervision and control over local authorities is supplemented by a judicial control and a legislative control. Under the English system of law, public officers of whatever position are subject to the jurisdiction of the ordinary civil and criminal courts and may be sued or prosecuted for illegal acts like any other citizen. Furthermore the special writs of *quo warranto, certiorari, mandamus,* etc., are available to call their acts into question in the regular courts and to insure their conformity with the laws, safe-guards which in the main will be found to exist in the United States also.

The legislative control is manifested as a result of the principle that all of these local units, which are public corporations, are corporations of special, not general powers and that they can act only under specific authority granted by Parliament either by acts of general application, mandatory or permissive in nature, applying immediately to the local areas, or through provisional orders of the central departments, or by special acts secured under private bill legislation. This process of private bill legislation, though free from the objections arising in the experience of the United States with special acts of the legislature, is expensive and dilatory and tends to overload the already overburdened Parliament with matters of local concern.

Summary of English Local Government.—We are now in a position to summarize the main characteristics of the English system of local government and to mention briefly some of the directions in which reform is being agitated. The English system then is characterized by the principle of a large amount of local self-government in at least six different kinds of units[5] some of which, like the parishes, the boroughs, and the counties, are historical subdivisions, others like the poor-law unions and the two kinds of county districts are artificial districts, all of which, with the exception of the poor-law units, are areas for general administrative purposes. The areas are all public corporations of delegated and specific, though broad powers. These powers are exercised, save in the case of the smallest parishes, by a repre-

[5] This description of the English system of local government does not apply to the metropolis of London which is governed under a plan provided by special legislation. Although by no means without interest for the student of comparative local government, its exceptional nature prevents its being considered in a brief general summary such as is attempted here.

sentative council elected on a democratic franchise including women, and composed of unpaid members, who select the administrative officers to carry on the actual work of administration under the direction of the council committees. The functions of the local areas are carried on under the supervision and control of various national administrative departments, a supervision and control which have been increasing steadily during the last hundred years, and which are inversely proportioned to the importance of the area and are relatively greater over the rural areas than over the urban units. All these functions, both of the subordinate areas and of the organs of administrative supervision and control, are subject to the plenary power of Parliament which, by the process of private bill legislation, has not hesitated to break into the uniformity of the system as regards the powers conferred on a particular class of local government areas by the grant of special powers to individual units. No distinction is attempted in the English system between central and local functions, the actual powers conferred upon the local areas being determined by custom and by administrative convenience, though the national treasury assists the local areas in the performance of many of their functions. Finally, the entire scope of activity of the local bodies as well as of the central authorities is subject to the judicial control of the ordinary courts.

Among the features of the English system which have been criticized and made the subject of proposed reforms may be mentioned first the unnecessary multiplicity and confusion of areas. The parish, even as reconstituted by the Local Government Act of 1888, has proved itself too small and financially too weak an area to accomplish the desired purposes and it is thought that the county districts and boroughs could well perform the functions

entrusted to the parish. Furthermore, the poor-law unions needlessly complicate the system as they are virtually the only remaining *ad hoc* authorities, of which there were so many during most of the nineteenth century. Even now their boundaries cut across district and even county lines, and it would seem that their functions might well be entrusted to the county districts, especially as in the rural districts the rural district councilors do now act also as guardians of the poor. As regards the method of central administrative control the scattering of this function among five or six different departments has been felt to be a weakness. But the establishment of the Ministry of Health to supersede the Local Government Board would seem to mark a still further development in that direction, since the Local Government Board had been gradually acquiring more and more of the functions of central control over local administration, while the Ministry of Health is to be relieved of all those functions formerly entrusted to the Local Government Board which do not relate to public health and sanitation. Finally, it has been suggested as a means of diminishing the pressure upon Parliament for local legislation that the counties might be constituted units of local self-government with general powers for the management of county affairs and the supervision of the subordinate divisions.

Local Government in France [6]

The Origin and Development of Local Government in France.—If we should commence our survey of the history of local administration in France at the same relative point as the one chosen for the point of departure

[6] Among the host of works in French dealing with the administrative system in France may be mentioned H. Berthelemy, *Traité de*

in the consideration of English local government development, namely, the establishment of a central power over the territories now comprised within the state, it would not be necessary to begin so far back in history. In England, as we have seen, the unification of the territories under one monarch was completed before the end of the Anglo-Saxon period and a definite system of local administration also existed. In France, on the other hand, the supremacy of the king was not definitely established until at a much later period and nothing approaching a uniform system of local administration for the nation as a whole came into being until the period of absolutism of the Bourbon monarchy reached its zenith under Louis XIV.

Urban institutions did, it is true, show in some measure a continuous history within the present confines of France from the times of the Roman Empire, for some of the cities of Gaul had been important urban centers and survived, though in much diminished importance, the Dark Ages following the migrations of the barbarians and the fall of Rome. A considerable measure of local autonomy was accorded to these cities by Rome under

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droit administratif, 6th ed. (Paris, 1910); A. Esmain, *Histoire du droit français,* 8th ed. (Paris, 1908); M. Block, *Dictionaire de l'administration française,* 5th ed. (Paris, 1905); and, with special reference to the administration of the communes, L. Morgand, *La loi municipale,* 7th ed. (Paris, 1907).

The literature in English on the subject of local administration in France is unfortunately very restricted, consisting chiefly of brief treatments found in works dealing with larger subjects. Among older works may be mentioned Goodnow, *Comparative Administrative Law* (New York, 1893), Vol. I, Book III, Chap. vi, and Vol. II, Book VI, Division II, Chap. vi. More recent treatments will be found in Ashley, *Local and Central Government* (London, 1906), Chaps. ii and vi; and, as regards the administration of communes, Munro, *The Government of European Cities* (New York, 1909), Chap. i.

the early Empire but in its last period their independence was curtailed and their administration generally turned over to the clergy.

With the revival of city life in Europe that began in the eleventh century a number of the cities of France succeeded in emancipating themselves from the feudal system that had spread over Western Europe and attained for a time a position of virtual independence, while the rural sections of the country were in the control of the nobility and clergy under feudal institutions. In the struggle between the Crown on the one hand and the feudal nobility and higher clergy on the other many of these cities secured from the Crown important rights of local self-government as the price of the aid they rendered the king, and in 1302 the towns were invited to send representatives to the Estates General. But this position of independence was not to continue beyond the time when the monarchy, having reduced the power of the nobles and the clergy, became absolute and was able in turn to deprive the towns of their long established rights of self-government.

From the time of Louis the XIV until the Revolution of 1789 then, the people of France in town and country alike were subject to an administrative system which recognized virtually no powers of local self-government, but rather imposed burdensome duties enforced by officers of the monarchy. These officers were the intendants and sub-delegates who knew no responsibility except to the king. The local offices, urban and parochial, formerly elective, became hereditary and subject to purchase and sale, and were under the minute direction of the agents of the central government. There was, therefore, at the period just before the Revolution no tradition of local self-government and no experience on the part of the

people in the management even of the simple affairs of their localities. It is true that even throughout the Bourbon absolutism a small number of provinces retained some of their former governmental powers which they exercised through their local estates or assemblies, but these powers referred chiefly to the matter of assessing and collecting the royal taxes which the province was required to pay. Police administration even in these more favored territories was completely under royal control.

So complete was the change inaugurated by the Constituent Assembly of 1789 in the system of local administration that it constituted a break in the continuity of local institutions much more pronounced than ever occurred in England. The existing territorial and governmental districts, comprising some thirty-four provinces, some sixty intendancies, and three hundred municipalities, were abolished and France was divided into eighty-six departments which were purely artificial divisions cutting across and into the old provinces whose sectionalism it was desired to destroy. The departments were subdivided into districts, and as the lowest units of government there were created, in place of the hamlets, villages, towns, and cities, some forty-four thousand communes covering the whole of France. This symmetrical and uniform division of the territory of France into local government areas has continued through all the intervening political and governmental changes down to the present day.

The uniformity of the Revolutionary scheme of local government is, however, the only feature that did prove lasting. The other two striking characteristics of the system established in 1789 were local democracy and the absence of central control. Each of the local areas

was to be governed by an elective council chosen on a broadly democratic franchise and quite free from central control over the local affairs, which were fully entrusted to the local bodies. Both of these features, especially in conjunction, proved unworkable. The people as a whole were utterly without experience in governmental matters and the distracted nature of the times required an increased rather than a diminished measure of central control over the localities in the interests of law and order. The Convention attempted to supervise the localities through its own agents, but the effort was without success.

Accordingly when the Directory came into power in 1795 another sweeping change was made in the system of local government. The departmental districts were abolished, a new division, the canton, supplanted the commune, and small directories replaced the councils in the departments and cantons. These directories were subject to suspension and dismissal by the central authorities who appointed representatives to supervise the local administration, which thus became again highly centralized.

Napoleon as First Consul and Emperor carried on this development. The departments were, it is true, again subdivided into districts, called *arrondissements,* and the communes were again made the ultimate units of local government instead of the artificial cantons, but all local autonomy was destroyed. The members of the local councils were appointed by the central authorities and the prefects in the departments, the sub-prefects in the *arrondissements,* and the mayors in the communes were the immediate appointees of Napoleon who thus kept in his own hands the most extensive direction of local affairs. Under the Napoleonic system, therefore, uni-

formity was retained, local democracy was abolished, and strict central control was assured. Although the tendency throughout the numerous political oscillations of the next seventy years was, with some notable setbacks, especially under the Second Empire, in the direction of an increasing measure of democracy in the constitution of the local governmental organs, uniformity and strict central control were so indelibly stamped upon the French system by Napoleon, that in those respects the system in republican France to-day is essentially that under the First Empire.

Another feature of the administrative system of the Revolution, confirmed and strengthened by Napoleon, which has served to distinguish the French, and as a result the whole continental system, from that found in the countries having the English Common Law as the basis of their jurisprudence, is the plan of special administrative courts to decide controversies between the individual and the administration as well as questions arising wholly within the administration itself. This independence of the administration from the ordinary judicial tribunals seemed to be demanded by the theories of the separation of powers which played so prominent a part in the political philosophy of the times. Under the Bourbon monarchy in its latter days the attempts of the royal ministers to introduce reforms were frequently frustrated by the action of the parliaments or regular courts which in France had not, as they had in England, become subordinate to the Crown. The experience of France with the interference of the regular courts in administrative questions was, therefore, one which led them to free the administration from the control of the ordinary courts in the new governmental system. But in order to safe-guard the rights and interests of the individual over against the

administration, special administrative tribunals or courts were created, comprising persons who though legally under the control of the chief administrative officers were not themselves immediately engaged in the active administration. This system of administrative courts has continued down to the present and will be referred to briefly a little later on.

It will not be possible in this brief survey to trace in detail the various changes that were brought about in local government under the different régimes that followed; the restored Bourbon monarchy, the Orleanist monarchy of Louis Philippe, the short lived Second Republic of 1848, and the Second Empire of Louis Napoleon. These changes reflected to a degree the liberal tendencies and the reactions that marked the fluctuations of the central government. It is sufficient to point out that when the Third Republic was finally established firmly, there were no units of local government in France, whether urban or rural, that had behind them any continuing traditions of local democracy or autonomy on which an essentially decentralized system like that of England could safely be built.

As a general proposition it may be stated that the Third Republic not merely inherited the administrative system established by Napoleon in the law of 28 *pluviose, an* VIII (1800) but has retained it in most of its essential characteristics. A greater measure of local participation has, it is true, been introduced, particularly in the laws of August 10, 1871, and of April 5, 1884, the former referring to the departments and the latter to the communes, determining the composition and powers of the local governing bodies in these units of local government. Later laws and decrees have also modified the system in some particulars, but the strict measure of

central administrative control remains essentially the same.

Present Characteristics of French Local Government.— France is divided to-day for purposes of general local government into eighty-six departments, 362 *arrondissements*, and more than thirty-six thousand communes, the number of the last named having been reduced from forty-four thousand by the Napoleonic legislation. In addition there are some three thousand cantons, made up of groups of communes, which are now only judicial and election districts, and various larger districts made up of groups of departments for special purposes such as judicial, military, educational, police, and forestry administration.

The Department.— There are, as has been said, eighty-six departments in France, which, although arbitrary divisions constituted by the Revolutionary government for convenience of administration, vary greatly in both area and population. The Department of the Seine, in which is included Paris, is at the same time the smallest in area and the largest in population. The average area of the French department is about twenty-four hundred square miles and the average population not far from half a million. Both in area and population, therefore, the average French department is a more considerable division than is the average English county. In spite of the fact that at the time of its formation the department consciously violated natural geographical and historical divisions it has inevitably developed in its century and a quarter of existence a certain social consciousness of common interests among its inhabitants. This has developed in spite of the limited participation of those inhabitants in governmental affairs until the legislation of the Third Republic conferred upon it the character of a

public corporation with certain powers of local self-government, in addition to its character as an area for state administration. In the clear distinction made in France between central affairs and local affairs we find another feature that distinguishes the French, or continental, system of administration from the English.

It is this dual nature of the French department which determines the composition and powers of the governmental organs found therein. As an area for state administration the department has as local agents of the central government the prefect and the prefectoral council. As an area for local self-government the department is provided with a representative assembly called the general council, and a supervising committee of that assembly called the departmental commission. The executive head of the local government corporation is the prefect, who thus unites in himself the dual character of a representative of the central government for purposes of state administration and of head of the area of local self-government.

Considering the department first as a local government corporation we find that the general council of the department consists of a number of councilors, varying from seventeen to sixty-seven, elected one from each canton in the department on the basis of universal manhood suffrage for a period of six years, one-half retiring every third year. The council is a body of specified, as distinguished from general, powers, in which respect it is like the councils of the English local government areas and unlike the councils of the communes, as will be seen later. The jurisdiction of the council is quite extensive. It has charge of all departmental property; has control of the departmental highways, that is, those which are neither sectors of the national highways nor the minor

roads entrusted to the communes; maintains normal schools, orphan and lunatic asylums; and exercises a certain control over the communes in regard to changes of boundaries, markets and fairs, customs, taxes, and the distribution of state grants for charitable, educational, and agricultural purposes. The departmental corporation secures its funds from the income of its property, state grants, and a local direct tax, superimposed, within a defined maximum, upon the state taxes. For permanent improvements the council may issue loans limited in terms to thirty years unless authorized by special law for a longer period.

In the exercise of its various powers the independence of the council shows a marked variation, graduated from a mere power to give advice to the central authorities on matters affecting the department, advice, which though prerequisite in certain cases to action by the higher authorities need not be followed, to powers of independent action not subject to higher approval. Between these two extremes are those powers which stand as exercised unless annulled within three months by a decree of the central government setting forth the reasons for the action, and those powers, chiefly in regard to finances, which need the express approval of the ministry before they can be exercised. Finally may be noted a function exercised by the council which does not relate to local administration, namely that of participating in the electoral college which chooses the national senators from the department. The councilors are unpaid and choose their own officers.

The general council of the department meets in regular session only twice a year, once in the spring and again in August, the first session being limited to two weeks, the second to one month. Although the council may

meet in special session on call of the central authorities or of two-thirds of the council, the inconvenience of getting it together interferes with frequent sessions and the law, therefore, provides for a smaller body known as the departmental commission to which the council may entrust any of its duties except those relating to the levying of taxes and the making of loans. This departmental commission consists of from four to seven members, elected by the council for the period of a year, who also serve without pay.

The chief function of the commission, indeed the reason for its creation, is to be found in the supervision and control it exercises over the prefect in that part of his dual functions which deal with the administrative affairs of the departmental corporation. In his capacity as administrative head of the local government corporation the prefect is subject to the continuous supervision of this commission which meets regularly each month and oftener when required. The commission audits the accounts of the prefect, examines and reports to the council on the prefect's budget proposals, inventories the departmental property administered by the prefect, and approves the execution of contracts and the bringing or defending of suits proposed by the prefect.

Aside from these supervisory duties the commission directly performs some of the functions formerly entrusted to the prefect, for instance, with regard to the priority of public works and the issuance of loans. It also regularly appoints members of semi-public commissions financially aided by the department, and takes part in highway and tax administration.

The prefect, as has been seen, acts, in one capacity, as the executive head of the local government corporation. As such he appoints and dismisses all officers in the de-

partmental service, issues all orders for payment on the department treasury, prepares the departmental budget, supervises public works, and executes all determinations of the general council. In the performance of this side of his official duties the prefect is, it is true, controlled by the general council and its departmental commission; nevertheless his real responsibility is even here determined rather by his relation to the central government. He is appointed by the President on nomination of the Minister of the Interior, is absolutely responsible to the same power, by which he also can be dismissed, and is subject at all times to be transferred to another department. Indeed in his dealings with the department as a local government corporation the prefect is kept in harmony with local sentiment rather through the round-about and indirect influence which the deputies from the department can exert on the ministry and reflecting from them on the prefect, than on the immediate control entrusted to the council and commission.

The prefect is a highly paid official who, although a political appointee and not required by law to have any technical or professional qualifications for his post, does usually bring to it a more or less extended experience in the field of public administration. His more important function to-day, as it was originally his only one, is to represent the central government in the territory comprised within the department. As such the prefect puts into effect within his department the decrees of the ministers; he exercises the appointing and removal power over a vast number of subordinate national employees in the field of postal administration, primary education, taxation, and national highways; he has a considerable measure of police ordinance power in its broader sense; he represents the national government in suits; and

finally, and among the most important of his functions from the point of view of this survey, he exercises a large measure of control over the communes in his department. This last function, which he exercises as agent of the ministers, includes such fundamental powers as the suspension of the councilors and mayors, the approval of the communal budgets for the purpose of insuring the insertion of the obligatory items, the annulment of ordinances issued by the mayors, the approval of appointments by the mayor to many of the higher positions in the police force, the approval of loans by the commune, the use directly or indirectly of departmental or national highways within the commune, the disposition, in any manner, of communal property, and other less important matters. In all of these directions his actions are subject to the control of the ministers and to the review of the supreme administrative court, the Council of State, when it is alleged that his powers have been used illegally.

Extra-legally the prefect is also the political agent of the administration and as such takes an active part in the elections within his department. This function, which is also a survival of earlier times, is the cause of a good deal of the opposition which has been directed against the prefect, especially in recent years. Being the agent of a ministry whose tenure of office depends on retaining a majority in the Chamber of Deputies it is almost inevitable that he should be expected by that ministry to aid the government majority in the elections in his department.

Beside the prefect there is another governmental agency for purposes of state administration within the department known as the prefectoral council. This consists of three or four members appointed and dismissed

by the President on nomination of the Minister of the Interior. They must be trained in the law or in administration and although receiving but a small salary they must devote their whole time to this work. The council has three classes of functions. It acts as an advisory body, as an administrative board, and as an administrative court. When acting in either of the first two capacities the council is presided over by the prefect. When sitting as an administrative court, however, a vice-president usually presides. As an advisory body the council must be consulted by the prefect on many of his important functions as agent of the central government, but it is important to note that he is not in any way bound to follow such advice. As an administrative board the council examines the accounts of the collectors of local taxes and gives approval to the communes and some of the departmental institutions to institute legal proceedings.

The third function of the prefectoral council, that of sitting as the administrative court of first instance, constitutes its most important function. It has already been pointed out that one of the distinguishing features of the French administrative system is to be found in the fact that controversies between the administration, national or local, and individuals or corporations who feel themselves aggrieved or injured by the action of the administration are not ordinarily subject to the jurisdiction of the regular courts but are brought before special tribunals known as administrative courts. The prefectoral councils constitute the courts of first instance for matters arising in the general administration, there being, however, special courts for controversies arising in the field of educational administration and the administration of the compulsory military service. Appeals lie from the

decisions of the prefectoral councils to the judicial division of the Council of State, the supreme administrative court, in cases where individuals make complaints "against those non-political acts of the administrative authorities of special and not general application, whose immediate effect is to violate the rights of individuals acquired by virtue of some statute, ordinance, or a contract." [7] Against any acts of the administration involving the excess of powers a case can be brought immediately before the Council of State, which may annul the act complained of, while as regards decisions of the prefectoral Council as an administrative court the Council of State has the same freedom of going into question of fact and expediency and of amending the action complained of as is accorded to the administrative courts of the first instance.

The Arrondissements.— Below the departments stand the *arrondissements* or districts, on an average four to a department. These, like the departments, were arbitrary divisions established by Napoleon for strengthening the central administration. Unlike the departments, however, they have remained areas for purposes of central administration only, are not public corporations, have no powers of local self-government, and are not very important even as administrative districts of state administration. In each district, except those in which the capitals of the department are situated, there is a sub-prefect, who, although appointed and dismissed in the same way as the prefect, is entirely the creature of the latter and acts as his representative. He furnishes the prefect with the necessary information relative to the public affairs within his district and transmits to the communes the acts and orders of the prefect. He, like

[7] Goodnow, *Comparative Administrative Law*, Vol. II, p. 226.

the prefect, devotes considerable attention to politics and elections in his district.

There is, it is true, a representative body for the *arrondissement* elected in the same manner as the general council of the department, but it has no powers of local self-government. Aside from apportioning among the communes in the district the quota of direct taxes assigned to it by the general council of the department, and of giving advice on matters of state administration affecting the district, the only other function of the district council is to form part of the departmental electoral college for the election of national senators.

The Cantons.— The cantons can be dismissed with but a word in this survey because they are not units of general administration for either state or local affairs. The experiment of the Directory of 1795 in making the canton, an arbitrary division, the ultimate unit of local government in place of the commune was abandoned by Napoleon. To-day the cantons no longer serve as electoral districts for the Deputies, but do so for the general council of the department and they are the districts for the inferior courts above the justices of the peace.

The Communes.— Of prime importance in the French scheme of local administration are the communes, which were for the most part ancient communities when the Constituent Assembly in 1789 made them uniform areas of local self-government on a democratic basis. Reduced to a position of virtual dependence upon the central government by the Directory in consequence of the unhappy results of decentralization during the period of the Terror, and to complete subserviency by Napoleon as a measure of insurance for the continuance of his dictatorship, the fortunes of the communes fluctuated with the changes in the national government until their pres-

ent status was determined by the legislation of the Third Republic, embodied in the Municipal Code of 1884 and its subsequent modifications. But the stamp of central administrative control imposed upon the French communes by the Napoleonic régime still remains deeply impressed upon them.

It is to be noted first of all, in contradistinction to the English system, that no distinction is made between urban and rural communities, the law of 1884 applying to all the thirty-six thousand communes alike, ranging from hamlets of a few houses to cities like Lyons and Marseilles, each with more than half a million of people. Paris, it is true, like London, being the capital and the metropolis as well, is governed under special laws, and some special arrangements have been perfected for Lyons. The predominatingly rural character of these communes can be seen from the fact that three-fourths of the communes have a population of less than a thousand, and nearly half of the total number have fewer inhabitants than five hundred. Only in the size of the council and in the control of the police is any distinction made in the Municipal Code between the largest and the smallest of these communes.

The governing authorities of the commune are the council, and the mayor and adjoints chosen by the council. The council consists of members elected by universal manhood suffrage for a term of four years, all councilors going out of office together. The size of the council varies according to a sliding scale from ten members in communes with populations of five hundred or less to thirty-six in communes with over sixty thousand inhabitants, except Lyons which has fifty-four. In communes with more than ten thousand inhabitants the councilors may be elected by wards, but as each ward must

return at least four councilors there may not be more than nine wards no matter what the size of the city. Elections are held on Sunday and, as formerly in the case of national elections, both a majority of the votes cast and one-fourth of the enrolled vote must be secured by a candidate to be successful in the first elections. Supplementary elections are held to complete the membership if sufficient candidates have not fulfilled the conditions in the first election, but in these elections a mere plurality suffices to elect.

The council is required to have only four regular meetings a year, but special meetings may be called, and in the larger communes are common. The first duty of the new council is to elect a mayor and adjoints, or assistants, the number of which latter varies from one to twelve according to the size of the commune, except Lyons again which has seventeen. Both the mayor and adjoints must be members of the council but no other qualifications are insisted upon.

The council in the French commune differs from the English borough and district councils in that it is a deliberative body only, the administrative functions being entrusted, under the French theory of the separation of powers, to the mayor and adjoints. On the other hand the communal council is a body of general powers whereas, as we have seen, the English local councils are authorities of specific powers. By the terms of the Municipal Code the communal council "regulates by its deliberations the affairs of the communes." Under this grant of powers the council may pass any measures affecting the commune which have not been either specifically entrusted to other agencies or expressly denied to the commune. The commune, therefore, acts under a broader theory of local powers than do the local units

in England. But, as will be seen, the limitations imposed on this power by the extensive functions assigned to the mayor and to agents of the central government, leave the scope of powers of the French communal council in point of fact less extensive than those of the English borough. To this consideration must be added the fundamental one that even in the exercise of the powers left to the commune the council is subject to a stricter control by the central administrative authorities than is the case in England.

While in England, therefore, the Local Government Acts, Municipal Corporations Acts, and other legislation, special and general, dealing with units of local government enumerate the powers granted to localities, the French Municipal Code after making a broad grant of general local powers to communes enumerates limitations upon those powers. In the first place the council has the function generally accorded to local authorities in France of advising the central authorities on measures affecting the locality, advice which, in accordance with the French system, need not be followed. On the face of it such a power would seem to be purely illusory, but the fact that the central authorities, if undertaking to act contrary to the expressed opinion of the local council, must answer to the parliamentary deputies representing the locality, gives this power some measure of vitality.

Most of the important powers of the council, that is, those local powers which are not assigned to the mayor or to agents of the central government, are made subject to approval by the higher administrative authorities, that is, the prefects or their representatives, the subprefects, the prefectoral councils, or the ministers of state. All proposals for the disposition of communal

property, including streets and parks, require higher approval. The communal budget must be submitted to the prefect or the President of the Republic for approval, according to the estimated income, who may alter the tax proposals but may not increase expenditures except to provide for the obligatory items of expenditure. But as the number of these obligatory items is continually increasing without a corresponding increase in the revenues of the communes this feature of central control is becoming more and more complete and burdensome. Loans for permanent improvements, if involving considerable amounts, require the approval of the central authorities, and when it is proposed to construct or acquire public utilities, the control of the higher authorities has been exercised pretty consistently to prevent such municipal socialism, with the result that even the larger French communes are a long way behind English boroughs in the field of municipal trading. The establishment and control of markets similarly require higher approval and a number of less important powers are circumscribed in the same way.

The communes derive their revenues from four principal sources: (1) franchises, licenses, and the income from municipal property; (2) certain state grants to needy communes; (3) direct taxes added to the national taxes within limits prescribed by general law or authorized by special act of the national legislature; and (4) the local customs, or *octrois,* levied upon food stuffs and certain other materials brought into the commune.

Control over the police is entrusted either to the mayor under central supervision or exercised directly by the central authorities, while the control over departmental and national highways, which include the main thoroughfares in all communes is also withdrawn from the control

of the council. As this latter control comprises the important matter of granting franchises to public-service corporations as well as the use of the streets by the commune itself for like purposes, a very important field of action is closed entirely to the French communes which in England is left to the boroughs. This leaves, therefore, but a limited field of action for the commune to be exercised independently by the council, especially as education in France is regarded as a national function and its administration is entrusted to a separate group of authorities.

Finally, it is to be noted that certain matters are expressly withdrawn from the deliberative activities of the council, such as the discussion of national and departmental policies, while the council itself may be suspended by the prefect or dismissed by the President of the Republic in case it undertakes activities that are denied it or fails to perform properly the duties that are imposed upon it. This power, it is true, is an extreme one and has been rarely used under the Third Republic, but its existence is another of the heritages of imperialistic France which infringes upon the independence of the communes.

The mayor, though appointed by the council and acting with his adjoints as the executive organ for the commune, is in reality still an agent of the central government for the performance of many central functions within the commune under strict central control. Like the councilors and adjoints, the mayor is unpaid, though the scope of his duties is such as to require all of his time. As executive head of the commune the mayor appoints and dismisses all communal employees, except the treasurer and the commissioner of police, subject to no legal restrictions. He prepares the financial reports

of the commune, and draws up and defends the communal budget before the council. He is administrator of the communal property and exercises the control over the local streets. He executes the ordinances of the council and has an independent ordinance power of his own for the preservation of public safety and health, within defined limits and subject to the approval of the higher authorities.

Important as are the mayor's powers as executive head of the local corporation, they are perhaps surpassed in extent and significance by the powers he exercises as agent of the central government. In cities of more than forty thousand inhabitants the control over the municipal police force entrusted to the mayor is in effect exercised by him under the most minute direction of the central government. Even in the smaller communes where his powers in this respect are greater his appointments to the more important posts must receive the approval of the prefect, while the commissioners of police are appointed directly by the national government. As agent of the central government, moreover, the mayor has charge of the *état civil*, or civil register, performs the civil marriages, and makes the reports required for the administration of the compulsory military service law, and in time of war the mayor's powers as local agent of the war department become even more extensive. The preparation of voters' lists, the administration of the state taxes, and the taking of the census are also among the matters entrusted to the mayor as local agent of the central government. Aside from the continuing supervision of the central government in all these cases, the mayor is subject to suspension by the prefect and dismissal by the President for malfeasance in office or neglect of his duties. The adjoints are merely his assistants without

specific powers of their own, the extent of their actual functions depending on the delegation of such secondary functions as the mayor may see fit to entrust to them.

Special Local Corporations.— For purposes of public improvements involving more than one commune or more than one department, as the case may be, and especially for the establishment and maintenance of expensive public institutions, the law provides for the union of communes or departments into local corporations for special purposes, but this is a power which has been made use of in relatively few instances.

Central Administrative Departments.— The principal central department acting as controlling authority over the agencies of local government is the Ministry of the Interior. Under the law, it is true, many of the acts of appointment, dismissal, dissolution, examination and approval, and veto with regard to local authorities are lodged in the hands of the President of the Republic, but under the system of parliamentary government in France, the President performs these acts much as the King of England performs his governmental acts, namely on the proposal of the ministry, without the exercise of discretion on his own part. In a number of cases indeed the law expressly states that the President shall act on the proposition of the Minister of the Interior. The same considerations control the relations of the other national departments that come into contact with the local government authorities, namely the Ministry of War, the Ministry of Finance, the Ministry of Public Works, the Ministry of Public Instruction, the Ministry of Agriculture, the Ministry of Commerce and Industry, and the Ministry of Education. It is not possible within the scope of this brief survey to describe the other agencies of national administration in the field of justice, finance,

military, and educational affairs. It may be worth while to point out, however, that for these purposes larger administrative districts are employed consisting of groups of departments. This fact is of some significance in connection with one of the proposals for reform to be mentioned below which contemplates the grouping of departments into "regions" for purposes of general administration.

Proposals for Reform.[8] — For twenty-five years the subject of administrative reform in France has been a political as well as an academic issue. Sixty per cent of the deputies elected in 1910 were pledged to administrative reform of some kind, while the literature on the subject during the last twenty years has reached enormous proportions. Briefly stated, the indictment against the present system is that it continues under a republican form of government the imperialistic administrative scheme of Napoleon. Deconcentration there has been since the establishment of the Third Republic, that is, many functions have been transferred from the ministers to their representatives in the local areas. But the battle cry of the reformers is decentralization. As is usual with reform programs, however, while the reformers are pretty well agreed as to the end desired, they are not at all agreed as to the means which will accomplish that end, and there are almost as many *projets,* or reform proposals, as there are reformers. These proposals range all the way from a mere increase in the powers of independent action accorded to the communes to plans for transforming France from a unitary into a federal state with

[8] An admirable, though brief, discussion in English of the various recent proposals for reform of the administrative system of France may be found in Garner, "Administrative Reform in France," *American Political Science Review,* Vol. XII, No. 1 (February, 1919), p. 17. See also Buell, *Contemporary French Politics.*

the ancient provinces reëstablished as units within the nation, having somewhat the same powers over their internal affairs as those which the commonwealths of the United States enjoy.

Criticism has been directed at almost every feature of the present system, from the ministers who are incapable of personally handling the enormous mass of duties imposed upon them with regard to local administration and who, consequently, of necessity turn most of these functions over to routine-ridden bureaucrats, down to the sub-prefects who are considered useless, expensive, and burdensome officials. The communes are depicted as operating under an administrative tutelage that leaves them no freedom but stifles all local initiative. The prefectoral council is described as ineffective and useless while the prefect appears as a petty dictator concerned largely with promoting the political interests of the dominant parties within his department. The department itself, though established now for a century and a quarter, is regarded as constituting an arbitrary division with no real community of feeling which should either be combined with other departments into regional divisions based on the ancient provincial divisions or be superseded entirely by these provinces reconstituted as units in a federal state. Even the system of special administrative courts which antedates the rest of the present administrative system does not escape criticism, though foreign students of that feature of the French plan have found that individual rights and interests are fully as well protected as they are in England or America where all officers are subject in their official actions to the jurisdiction of the ordinary courts.

It is impossible of course to predict which of the numerous proposals will finally be enacted into law or

whether some new suggestions will be adopted, but it is safe to say that some measure of greater local self-government will be introduced in the near future by diminishing somewhat the extreme administrative centralization characteristic of the present system. The practical political advantage of centralization, with its incidental patronage to the parties in control at any given time, makes them hesitate to inaugurate the desired changes. In England the steady development during the last hundred years has been in the direction of greater administrative control, approaching, therefore, the French system, and students of local government in the United States are pretty well agreed as to the need of a greater measure of central control and as to the superiority of administrative control over the system of legislative control that has been characteristic, as will be seen, of the American system. Yet France is in the midst of a movement in the opposite direction. As these opposite tendencies in the two main systems of administration found in modern states, for what is true of France is true in a measure also of the states that have adopted her system, tend to approach each other, it may be safe to assume that the ideal scheme if such there be, will be found somewhere between the two extremes.

Conclusions on French and English Local Government.— In the light of this brief survey of the origin, development, and present system of local government in the two countries of Europe which typify the two main systems of governmental administration found in the civilized world to-day, we may revert briefly to the query propounded at the outset of this chapter. Is any particular system of local government, or is any system of local government at all, necessarily a feature of governments in general or are its existence and particular character-

istics simply the accident of historical events? We have undoubtedly seen that local government of some kind has existed in both England and France as far back as we have authoritative information as to the existence of any government. Indeed, it is certain that localities, that is, groups of people in restricted areas with primitive governments of their own, antedated the existence of large governmental units and that states originated in the establishment of a central authority over these groups by force or by voluntary agreement. But the measure of local self-government which these localities were to retain and the conditions under which new groups were to grow up as political or governmental units originally depended principally on the success of the superior authority in retaining and strengthening its hold over the subordinate groups. This success was affected by a great variety of factors, such as internal, social, and economic development and the relation of the superior power to foreign political forces such as other states and the Church. Both in England and France we have seen that the monarchy was ultimately successful in asserting its predominance over the local forces within the state, namely the feudal nobility, the clergy, and the towns. But while in England the monarchy gradually lost its position of preeminence in the state in favor of a national representative body, in France the absolutism of the monarchy continued until comparatively recent times. In consequence of this divergency in national development English local government could and did continue traditions of local autonomy which in France were impossible. In the orderly development of democracy in England, therefore, during the nineteenth century, both democracy and a large measure of self-government for the subordinate divisions were given increasing recognition, whereas the instability of

national institutions in France during that same period mitigated against a like development. For the security of the national government in France, whether it happened to be for the time being a republic, a constitutional monarchy, or a virtual dictatorship, it was necessary for the central government to keep its iron hand on all existing areas, to abolish some, and even to create new ones. Not until very recent times, therefore, has France been in a position to consider the question of local administration in the way it has been considered in England for nearly a hundred years past, namely, on its merits.

Even to-day in both countries historical traditions play an important part in the consideration given to this subject. In England, where tradition plays such an important part, changes are not considered until they show themselves to be necessary in experience rather than because there is a theoretical reason for improvement. In France, on the other hand, the country *par excellence* of political theory, considerations of political necessity in the past and of political expediency in the present have operated until now to prevent the application of political theory. But in both countries one factor of prime importance is influencing the developments in the field of local government and that is the fact that with the formerly undreamed of expansion of governmental activity the national governments are in danger of being completely swamped unless more and more functions are entrusted to subordinate divisions. These functions not only include matters which in their nature are clearly of local concern primarily, but even matters which are recognized as being of direct concern to the nation as a whole, such as education, health, police, etc.

We may conclude, therefore, that the systems of local government found in these countries represent the result

of historical developments rather than of scientific study of the problems of local government and that their present characteristics are so bound up with past developments and present social, economic, and political peculiarities, that their merits and defects are not to be dissociated from these conditions. Consequently it would be illogical and dangerous to conclude from our survey that simply because a particular feature is found to work well or ill in England or in France a similar feature would necessarily be fit for adoption or rejection in the United States, where all these conditions set forth above may be fundamentally different.

In order to get the necessary background, therefore, for the critical consideration of our own system or systems of local government in the United States it will be advisable to trace briefly the origin and development of that system in the next chapter.

CHAPTER II

ORIGIN AND DEVELOPMENT OF LOCAL GOVERNMENT IN THE UNITED STATES[1]

Local Government in the Colonies

Early Colonial Forms of Local Government.—When the first colonists came over from England to North America early in the seventeenth century they brought with them, of course, a familiarity with the lo-

[1] The most valuable single treatment of this subject as regards counties and townships is to be found in Howard, *Local Constitutional History of the United States* (Baltimore, 1889), Johns Hopkins University Studies in Historical and Political Science. Based to a considerable extent on this work is the treatment in Goodnow, *Comparative Administrative Law* (New York, 1893)), I, Book III, Chap. i. A full discussion of local government in the Colonies is found in Channing, *Town and County Government in the English Colonies of North America,* Johns Hopkins Studies in Historical and Political Science (Baltimore, 1884), No. X. The origin and development of city government from Colonial times through the nineteenth century will be found discussed in Fairlie, *Municipal Administration* (New York, 1901), Chap. v, and in condensed form, including some of the principal developments after 1900, in Munro, *The Government of American Cities,* third edition (New York, 1920), Chap. i. The most recent historical survey of rural local government in the United States is Fairlie, *Local Government in Counties, Towns, and Villages,* new edition (New York, 1914), Chaps. i–iii.

The origin and development of local government in individual states has been treated in a large number of books, monographs, and articles, many of those relating to rural local government being listed in the bibliography to Fairlie, *Local Government in Counties, Towns and Villages,* pp. 275 ff, and those dealing with city government being found in Munro, *A Bibliography of Municipal Government* (Cambridge, 1915), pp. 8–13.

cal institutions of the mother country which naturally served as a model for the foundation of their own governmental devices, modified though they were in consequence of a variety of factors in the new environment. In the preceding chapter was traced briefly the development of these local institutions from Anglo-Saxon times to the present, and now a cross-section of this development, taken towards the beginning of the seventeenth century, will show what the system of local government was with which the colonists were familiar.

In the rural areas the smallest unit of government was the parish, the successor, as has been seen, of the township or town, and still sometimes called by the latter name also. In the parish or vestry meeting the inhabitants possessed a democratic assembly for the consideration of parish affairs and the selection of parish officers, and commonly also there was chosen, in the larger parishes at least, a select vestry. The parish was both an ecclesiastical and a civil unit dealing with matters that concerned church property and administration, involving the church rate, as well as with matters like highway administration and poor relief requiring other rates. The parish as an ecclesiastical unit was also the agency for such public elementary education as was provided. Among the parish officers of importance, both civil and ecclesiastical, were the vestry clerk, the church wardens, acting also as overseers of the poor, beadles, sextons, etc., all chosen by the parish meeting, and, most important of all, the constable, frequently selected by the justices of the peace.

Above the parish there still remained the hundred with its high constable, serving as a military and police district, but by this time become a relatively unimportant area. The county was the chief area for local administration,

though no longer possessing a real representative body of its own, the county court having declined greatly in importance by this time. The lord-lieutenant, nominally at the head of the county, was largely a ceremonial officer, though having charge of the county militia and performing some other minor functions. The sheriff, appointed like the lord-lieutenant by the Crown, had also lost his former position of preëminence, but was still the chief executive officer of the courts, summoning the juries, executing the judgments, and administering the jails. The ancient office of coroner, selected by the county court, also survived in diminished importance.

On the administrative side the most important functions were performed by the justices of the peace acting singly, in petty sessions, or in quarter sessions. These justices, appointed by the Crown, performed a large number of functions directly, such as the care of county roads and bridges, the levying of county taxes, the granting of licenses, the giving of special relief, etc., and also exercised a strict supervision over the parish officers. They were subject to dismissal from office and were carefully supervised by the Privy Council, but the office being burdensome and unsalaried the justices in reality occupied a position of considerable independence.

In the urban areas the unit of local government was the borough, a considerable number of new boroughs having been created by the Tudors for political purposes in order to insure greater support for the Crown in Parliament. In fact the political function of electing representatives to the House of Commons was the chief activity of the English boroughs at the beginning of the seventeenth century. The government of the boroughs had at this time become largely oligarchic, and close corporations, in which but a small portion of the inhabitants had

any share, were the rule. Few boroughs, with the exception of London, had attained any importance, a population of ten thousand being attained in but two or three of them, and even in these few there were hardly any activities of importance, aside from police and judicial administration. The borough parish performed the same functions as the rural parish and with the same officers.

With these local institutions as a background the English colonists began their life in North America. Of course in the very beginning there was no differentiation between local and central government, the first settlements having only their purely local problems to consider. Indeed in some of the colonies the central colonial government developed out of a union of the localities. As settlements became more numerous and more scattered, however, we find a differentiation arising between the central government of the colonies and the management of local affairs of the various settlements. Right at the outset of this development we find that the form in which the institutions of the mother country were adopted in the colonies manifested some marked differences in the various colonies of North America, differences that gave the early systems distinct characteristics which have in large part been perpetuated in the original states and extended to the subsequent states, so that even to-day we can roughly classify the various systems, of local rural government at least, according to the variations exhibited in the early colonies.

These variations were chiefly due to three factors influencing the character of the early settlements, namely, the nature of the authority under which the settlements were made, the character of the settlers themselves, and the character of the country in which they settled.

Although the earliest charters under which settlements were made in the North American colonies were alike in that they did not contain provisions as to the manner of founding settlements or the management of their local affairs, the subsequent character of these charters was not without some influence in this regard. In Virginia, for instance, the transformation of the colony from a trading company to a crown colony tended to perpetuate English social and governmental institutions more completely than in Massachusetts where by the transfer of the charter of the corporation from England to the colony there was greater latitude for developing in new directions.

In the second place, the New England colonists belonged largely to the middle class of England and came to the new world from conscientious motives rather than from a desire for material gain, and were relatively free therefore from caste feeling and naturally inclined towards democracy. In Virginia, on the other hand, many of the early settlers belonged to the upper classes whose social preëminence was accentuated in contrast to the large number of indentured servants who were brought to the colony in the early days, and still more by the introduction of African slavery later on. Again, in New England we find that the land was granted to groups of individuals for their joint benefit, who thus early developed a community consciousness, whereas in Virginia, whither settlers came primarily for motives of amassing wealth, large land grants were made to individuals who thus tended to occupy a position of social and political importance somewhat akin to that of the landholders in England.

Finally, we see important differences between New England and the Southern colonies in the nature of the

climate and the soil, which determined in great measure the character of the settlements and the system of local government. In New England neither soil nor climate was favorable to agriculture on an extended scale and the hostility of the Indians discouraged the erection of isolated dwellings. Consequently the population was concentrated in compact villages or towns clustered within a distance of half a mile from the church or meeting house and the conduct of the affairs of these communities was long the primary concern of the colonists who relied upon fishing, trade, and manufacturing as their chief means of livelihood. In Virginia on the contrary the navigable rivers permitted settlement at a distance from the coast, while the soil was suited to the cultivation of tobacco which required large plantations and numerous laborers. The settlers scattered therefore, instead of concentrating in towns, and each plantation owner was a sort of manorial lord on his own estate without the need of any local government. Here it was inevitable that the administrative units within the colony would be composed of groups of these large plantations, constituting an area somewhat analogous to the English counties.[2]

These two types of colonial conditions represented the extremes, the fundamental unit of government in Massachusetts and New England generally being the town, and in Virginia and others of the southern colonies being the county. It is true, as will be seen, that counties, consisting of groups of towns, developed in New England, and that subdivisions of the county exercising powers of local government were established in Virginia, but the pre-

[2] For a full description of the systems in Massachusetts and Virginia see especially Channing, *Town and County Government in the English Colonies of North America.*

dominating position of the town in the former case and of the county in the latter case have remained characteristic of these portions of the United States to the present day. In the middle colonies the geographical, climatic, and social conditions partook somewhat of the character of both the extremes already portrayed, and, as might be expected, the local institutions reflected a combination of the features of the other two types that has caused the system of local government there developed to be designated as the compromise system, in which the county was relatively less important than in Virginia but more important than in New England, and the town more important than in the southern colonies and less significant than in New England. A brief description, therefore, of the most important colonies representing these three types of local institutions will suffice both to give an adequate idea of the scheme of local government found in the colonies and to supply the originals of the prevailing types in the United States to-day.

Local Government in the Massachusetts Colony.— In Massachusetts from the earliest date the affairs of the settlement were controlled by an annual meeting of the freemen which was called the town meeting. Settlement in the communities and consequently participation in their affairs was dependent upon membership in the church, and the meeting house, like the parish church in England, was used both for divine services and for the transaction of town business. The town meeting was, therefore, very similar to the old English parish meeting or vestry, the successor of the earlier town-moot, though, as has been seen, the vestry in England had by this time become pretty generally a close corporation in the character of a "select vestry." The town meeting elected annually a committee of selectmen, fixed in an early colonial law

at not more than nine, to manage the affairs of the town in the interval between town meetings and to perform such functions as were delegated to them. Subject to the power of the town meeting to overrule their actions these selectmen exercised pretty much all the powers possessed by the town. Among these powers were included the care of the highways, poor-relief, the assessment and collection of taxes and tithes, the preservation of the peace, the passage of by-laws, the provision of elementary education, and the registration of land titles. The town was also made the militia unit, each town constituting a company, and was the election district for the General Court, each town electing one or more representatives at a special meeting, presided over by the selectmen. For its other meetings the assembly elected a moderator or chairman. Finally the town had its own court of petty jurisdiction, with a justice at first appointed by the General Court but later locally elected.

In addition to the selectmen, the Massachusetts towns had a large number of other officers chosen by the town meeting or by the selectmen acting for it and serving, like the selectmen, without pay. These officers were for the most part replicas of the English parish officers, which latter by this time, however, were no longer the agents of the parish so much as of the justices of the peace. Among the more important of these officers may be mentioned the town clerk, the constable, the surveyor of highways, the overseers of the poor, the assessors and collectors of taxes, and the treasurer. The town clerk was secretary of the town meetings and of the committee of selectmen, registrar of births, marriages, and deaths, and issued process for matters triable before the justice of the peace. The constable was the police officer of the town and sometimes exercised additional duties. The surveyor

of highways was charged with the duty of constructing, maintaining, and keeping free from obstructions the roads and bridges of the towns. The other officers named above and various minor officers performed the functions indicated by their titles, but in the smaller towns the selectmen themselves frequently performed a number of these lesser functions.

The principal unit of local government in Massachusetts, then, was this town or township as it seemed to be called indiscriminately. There were other designations of local areas such as village, plantation, district, precinct, and parish, which were, however, subordinate or at least subsidiary to the town. Villages and plantations seem to have been communities in the neighborhood of towns but not yet created into towns themselves. They seem to have been designated "districts" for education and taxation purposes, "parishes" for ecclesiastical purposes, and "precincts" when regarded as comprising the jurisdiction of a constable. They possessed their own local assemblies or meetings.

The New England town was not a public corporation, and it is worthy of remark that boroughs or incorporated towns were not created in New England during colonial times at all, with the exception of two insignificant instances in Maine which lost their character of boroughs when Maine was united with Massachusetts in 1652.

Although the town in Massachusetts, and in New England generally, turned out to be the most important unit of local government, and, indeed, antedated in some cases not only the establishment of other local areas but even that of the central government, it did not long remain the sole governmental subdivision of the colony. The old English hundreds, by this time practically inactive in England, were not revived in Massachusetts, but in

1643 the colony was divided into four shires, named after the familiar ancient counties of eastern England, Essex, Middlesex, Suffolk, and Norfolk. Shires appear to have existed in some form even before this, and already in 1636 the General Court had established four Quarter Courts within the colony, which later developed in the county courts, and in the same year the towns were grouped in three militia districts. In each of the shires created in 1643 there was provided a lieutenant, at first elected but later appointed by the Governor, in charge of the regiment of the shire, composed of the companies of the various towns. To this larger area were gradually entrusted further powers such as the levying of taxes, the registration of land titles, and probate administration. The Court of Quarter Sessions became the Court of General Sessions composed of justices appointed by the Governor, and this court had jurisdiction over the laying out of highways, the towns being charged with the duty of construction and maintenance of those portions of the highways lying within their limits. The Court also performed certain other administrative functions such as the licensing of inns, and of liquor vendors, the approval of town by-laws, care of the poor in certain cases, and the determination of the tax rate and its apportionment among the various towns. In its composition and powers, therefore, the Court of General Sessions was not unlike its prototype, the Court of Quarter Sessions in England. County officers were provided for, such as the treasurer and sheriff, appointed in Colonial times by the Governor. No representative body, it may be noted, was provided for county affairs.

In the other New England colonies counties were also created, though somewhat later than in Massachusetts, but they were chiefly judicial and militia districts and

did not have even as extensive an administrative jurisdiction as that of the Massachusetts counties. Not without significance, however, was the introduction in Connecticut of the office of local prosecuting attorney in each county, an officer not found in the English judicial system but later incorporated into the judicial administration of nearly all of our states.

Local Government in the Virginia Colony.— Turning now from the typical New England colony to Virginia we find that although the governmental traditions of the settlers were the same here as in Massachusetts the differing local factors mentioned at the beginning of the chapter affected the application of English institutions in a substantial manner. As has been seen, land grants in Virginia for purposes of settlement were commonly made to individuals instead of to groups, but from the earliest colonization there were some settlements comprising groups of families, as well as plantations on which dwelt a single family with its servants and slaves. These local groups of people were variously designated as congregations or parishes in relation to the church, and the plantations were also known as hundreds. Even the name "city" was found among the localities that sent representatives to the first general assembly in 1619. The representatives in the first general assembly were called burgesses and the districts from which they were chosen were known as boroughs, but they had nothing in common with their English prototypes except this function of choosing members of the general representative assembly. As early as 1631 the parish appeared as an electoral unit, and ten years before that church wardens were mentioned. The parish became the unit of local administration over the members of the congregation and it followed much more closely the English original than

did the New England town. A minister, two or more church wardens, and vestrymen, all chosen for a year, were early provided for by law and at first, it is true, the vestry were chosen by the vote of the parishioners. But as early as 1661 the law provided that vacancies on the vestry should be filled by the vestry itself, and so it became a closed body like that of the English parish, and a democratic local assembly like the New England town meeting did not develop.

The Virginia parish performed through its vestry functions not only concerned with the affairs of the church, such as the election of church wardens and of the minister, and the providing and management of church, parsonage, and glebe, but also civil functions such as the care of the poor, the recording of property limits in the parish, the counting of tobacco, the arrest and sale of negroes improperly freed, and other minor duties. For these purposes the vestry could levy and collect tithes or taxes. In addition to the two church wardens as executive officers, there was a parish clerk and minor officers. At first the parish figured, as was seen, as an electoral unit for the general assembly but after the organization of counties these latter became the election districts and though an attempt was made to revive this function of the parish in 1655, the county continued as the election district.

Counties appeared as governmental subdivisions in Virginia in 1634 when the colony was divided into eight shires, though apparently such a division had been contemplated as early as 1618. These counties were organized on the model of the English counties of the time and their number was increased from time to time. Owing to the prevalence of large plantations and the scattered nature of the population these subdivisions were more

suited to care for the governmental needs of lesser areas than were the parishes. In some cases the parish and the county were identical, or even several counties might be included within a single parish, but as a rule the county comprised several parishes.

The Virginia county was an administrative district, an election district, a militia district, and a judicial district. Monthly courts held in several of the settlements by justices appointed by the Governor and the Council were established as early as 1623, and in 1642 these were called county courts, the judges being known at first as commissioners of the county courts and later as justices of the peace. The county court as later developed consisted of eight or more gentlemen inhabitants of the county, commissioned by the Governor, only one of whom apparently, as was the case with the justices of the English quarter sessions, had to be learned in the law. In addition to its appellate jurisdiction over the petty cases decided by the individual justices, and its original jurisdicition over all civil and criminal cases except felonies, the county court was an important administrative body. Among its functions in this capacity was the erection and maintenance of the county court house, the construction and repair of highways and bridges, the keeping of rivers free from obstructions, the designation of landings, the controlling of the erection of water mills, the locating of tobacco warehouses, the issuing of licenses for taverns, and the nomination of the sheriff, justices, coroners, and constables for appointment by the Governor. The court also appointed its own clerk who acted as recorder of deeds. These justices were chosen from among the large planters and constituted, therefore, a "squirarchy" very like that of the justices of the peace in England, except that their holdings and their control over

the servants and slaves on their plantations gave them perhaps an even greater dignity and authority than that enjoyed by their English originals.

For the performance of these functions the county court levied county taxes, for which purpose the county was divided into precincts, in each of which a justice prepared the list of "tithables." The chief officer of the county as an administrative and judicial unit was the sheriff, who performed much the same duties as the English sheriff of the period. He was selected by the Governor from among three of the justices nominated by the county court, and in addition to his duties as executive officer of the court as a judicial body he collected provincial and county taxes and usually the parish levy as well, and acted as county treasurer. The sheriff seems to have been assisted by constables appointed by the county court over designated precincts in which they acted as local police officers, besides serving warrants, summoning coroner's juries and witnesses, and performing certain administrative functions such as inspecting the tobacco fields, executing the game laws, and taking charge of runaways.

The coroner, appointed likewise by the Governor on nomination of the justices, performed the same functions as those exercised by the English coroner of that time. Another county officer of importance was the surveyor appointed by the central authorities.

The county was the election district for the House of Burgesses, the sheriff acting as election officer. This election was about the only governmental function in which the non-landholders of the county participated and at the beginning of the eighteenth century even this participation was restricted to freeholders.

Finally as a militia district the county was in charge of a county lieutenant appointed from among the most

important men of the county by the Governor, with authority to list all males over eighteen years of age.

Although there were relatively few settlements of any importance in the early days of Virginia, and the term borough, as has been seen, designated in 1619 not local government units but mere election districts for the General Assembly, one or two of the settlements were called cities, as Charles City and Elizabeth City, and were designated as corporations in the laws, as early as 1623. Provision was made early in the eighteenth century for incorporated boroughs based on the merchant-guild constitution of English boroughs, but this act was later repealed and not until 1722 was a charter of incorporation granted in Virginia.[3] This charter to Williamsburg was followed by similar charters to Norfolk and Richmond, all granted by the Governor. The charters were similar to those granted by the Crown to English boroughs and apparently gave the boroughs a position of independence with relation to the General Assembly. The governing body of the borough corporation was reproduced from the English boroughs and consisted of a common council comprising mayor, recorder, aldermen, and councilmen, sitting as one body. Even the character of the English borough as a close corporation was reproduced in Norfolk where the council was a self-perpetuating body, though in Williamsburg and Richmond the councilmen were elected by the freemen of the borough and the freeholders, while the mayor and recorder were appointed by the Governor. Another characteristic of the English borough reproduced in the Virginia charters was that of special representation in the assembly, for Williamsburg and Norfolk each sent a special representative after their

[3] For a full discussion of colonial boroughs see Fairlie, *Essays in Municipal Administration* (New York, 1908), Chap. iv.

incorporation, the franchise for members of the Assembly in the latter city being exercised, however, not by the council merely but by all the members of the corporation, which included freehold householders, resident owners of an estate worth fifty pounds, and tradesmen of five years standing.

The borough as a corporation had the customary rights and privileges of perpetual succession, of receiving, owning, and disposing of property, of suing and being sued in the courts, and of possessing a corporate seal. The functions of the boroughs were legislative, administrative, and judicial. During most of the colonial period the judicial functions were the most important, the mayor, recorder, and aldermen being individually justices of the peace with jurisdiction over petty civil suits and the power of commitment for criminal offenses. Sitting as a body these officers constituted a court of record, meeting usually once a month, and having both civil and criminal jurisdiction, coördinate, in the later period, with that of the county courts.

The borough council had authority to enact by-laws and ordinances for the good government of the borough, provided they were not repugnant to the powers of the Crown, the laws of England, or the laws of the colony, and under special restrictions imposed by the charter These general powers were supplemented and enlarged from time to time by special grants of power by the colonial legislature. These ordinances related chiefly to matters included under the head of police powers but extended also to the regulation of the prices of food.

Under the head of administrative functions, which owing to the insignificant size of the boroughs, did not in colonial times assume great importance, were included the establishment of markets and fairs, the erection and

maintenance of public buildings, the keeping of streets free from rubbish and obstructions, the sinking of public wells and erection of pumps, the preservation of order at first merely through constables and later with a force of nightwatchmen, the provision of fire-engines and firemen, some street improvement, and the beginnings of public lighting. At first the income of the boroughs was limited to fines, fees, licenses, and rentals, but towards the end of the colonial period as new needs developed authority was granted by the legislature to levy direct taxes. But these taxes did not constitute a source of very great income and the total expenditures of the boroughs at this time were much below those of cities of the same size today. Of some importance, however, was the fact that even in colonial times when the original grant of corporate powers came from the executive charter, the boroughs turned to the colonial legislature for additional authority, thus paving the way for the supremacy of the legislature over the cities, which characterized the American system from Revolutionary times on.

In Virginia, therefore, we find in colonial times a system of local government, both urban and rural, modeled closely along the English lines and partaking of the centralized, unrepresentative, and aristocratic character of the latter, in contrast with the democratic institutions of Massachusetts and of most of the New England states. In the other southern colonies local government developed later than in Virginia owing to their later settlement, but while there were local variations of some importance, the system that finally developed tended to approach that of Virginia.

Local Government in the Middle Colonies.— We will consider briefly the system of local government that developed in the two most important of the middle col-

onies, New York and Pennsylvania, which manifested not only a mixture of some of the characteristics of the two distinct systems already considered, but each within itself developed certain characteristics that stamped the local institutions adopted by the later states formed to the west of these commonwealths.

In both New York and Pennsylvania the first settlements were made by the Dutch, under authority of the New Netherlands Company and its successor, the Dutch West India Company. In its charter of 1629 this latter company established a system of local government modeled on the lines of the feudal manors of Europe, whereunder large tracts of land, sixteen miles along the river and of indefinite width, could be secured by the patroons who should establish colonies of fifty persons or more over fifteen years of age. Over the settlers these patroons exercised all governmental powers, with the right of appeal to the New Netherlands Council. But the settlements were few and small even after 1640, when the size of the patroon's estate was much restricted, and settlements independent of the patroons with a measure of local self-government were authorized. In 1664, the year of the conquest of New Netherlands by the English, New Amsterdam, by far the most important of the Dutch settlements, comprised only fifteen hundred inhabitants.

In 1665, the year after the grant of New Netherlands to the Duke of York, a systematic code was drawn up establishing a system of local government for the new colony. This code provided for town meetings of the freeholders to elect a constable and eight overseers who constituted a town board with legislative, financial, executive, and judicial powers. The towns were made, therefore, the primary unit of local government as in Massachusetts, but town government was representative

rather than democratic as in Massachusetts. The foundations of county government were also laid at this time in the creation of judicial districts, first in Long Island which was known as York-shire, called ridings, comprising several towns and presided over by a sheriff appointed by the Governor. A court of sessions comprising the justices of the peace of the riding exercised a jurisdiction similar to that of the courts of quarter sessions in other colonies. Similar courts were subsequently established in other portions of New York and for the settlements along the Delaware which came under the jurisdiction of William Penn by the charter of 1681, from which date the institutions of Pennsylvania and New York became distinct.

In 1683 county government was definitely established in New York through the creation of ten counties with appointive justices exercising both administrative and judicial functions, and an appointive sheriff exercising the usual powers. In the same year a law was passed providing for the popular election of supervisors in the towns of each county for the supervising of public affairs, the first instance in the colonies of elective officers in the county. This feature was destroyed in 1686, it is true, after the accession of the Duke of York to the throne, but by act of the assembly in 1691 it was revived. From that time on [4] each county had a board of supervisors, one chosen from each town by the freeholders, which had charge of the fiscal administration of the county, each supervisor levying, assessing, and collecting the county taxes in his town. At first the appointive justices of the peace retained their administrative jurisdiction over highways and other county affairs, but gradually this

[4] Except from 1701 to 1703. See Goodnow, *op. cit.*, Vol. I, p. 167, n. 3.

jurisdiction was transferred to the board of supervisors whose powers became more extensive than those of the county courts in Massachusetts. On the other hand, the New York towns through their elective officials exercised more extensive functions of local government than those possessed by the Virginia parishes and exercised by the self-perpetuating vestries. In addition to the supervisor chosen to represent the town on the county board there were in the towns, as locally elected officials, the clerk, the constable, the assessors and collector, surveyors, and overseers of the poor.

There were three charters issued to municipal corporations in New York during the colonial period, the earliest being granted in 1686 to New York City and to Albany, though New York was recognized as a borough corporation in 1665, having been accorded the character of a city by the Dutch West India Company as early as 1653.[5] New York City, though smaller than Boston and falling behind Philadelphia in the eighteenth century, always retained its position of preëminence in the colony owing to its commercial advantages, and by the time of the Revolution had reached a population of over twenty thousand. A new charter was issued in 1730 somewhat increasing the city's powers, and owing to the increase in size additional powers with authority to levy taxes for their exercise were granted to the city by special laws all through the later colonial period.

The New York boroughs elected their councilors and aldermen by vote of the freemen and freeholders of the borough, while the mayor was appointed by the Governor, reappointments being common. Although enjoying no veto power and no power of appointment the mayor exercised some special administrative powers, such as the

[5] Fairlie, *op. cit.*, p. 52.

licensing power over innkeepers, in addition to his judicial powers as justice of the peace, member of the borough court and of the county court, which made him an officer of considerable importance. The borough ordinances were effective for one year only unless reënacted by the council or approved by the central authorities.

New York City by the end of the colonial period was performing a wide variety of functions, though each was developed to a limited extent only. By 1769 the receipts of the city exceeded ten thousand pounds, a considerable and increasing share of which was derived by direct taxation. Among the activities of the city may be mentioned the establishment of markets and fairs, the management of ferries, the building and control of docks and wharves, the laying out, paving, repairing, and cleaning of streets, the building of drains, the erection and control of pumps and wells, the provision of fire engines and firemen, the lighting and policing of streets, and the levying and collecting of the necessary taxes. Albany, though much smaller, exercised in general the same powers as New York City, while the insignificance of Westchester, the third chartered borough in New York, dating from the earliest years of the eighteenth century, prevented the development of such extensive governmental needs.

Pennsylvania, which, as has been seen, was settled in the same way as New York and developed similar institutions under the Dutch and the Duke of York's laws, began its individual existence as a colony in 1681 by the charter granted by Charles the Second to William Penn. The population was, however, very sparse and not concentrated in towns. The county was, therefore, established as an area of local government before the town, three counties being established in the province, and three counties in the "territory" which had been acquired

from the Duke of York and which later became Delaware. Assessors were chosen by the local members of the assembly to assist the appointed justices of the peace in tax administration, and in 1696 these assessors were elected by the county at large, thus reproducing in Pennsylvania the establishment of elective officers in the counties which had definitely taken place in New York five years earlier. The sheriff, clerk, coroners, and justices of the peace for each county were at first all appointed by the Governor, the county being principally a judicial district and a district for the election of representatives in the council and the assembly. In 1705 the elective principle was extended to the office of sheriff.

The most significant development in the system of local administration in Pennsylvania occurred in 1724 when it was provided that each county should elect at large three commissioners to manage the fiscal affairs of the county in place of the justices of the peace. This body, like the board of supervisors in New York became the chief administrative authority of the county, but instead of being a large board composed of representatives of the towns, which had not yet been established in Pennsylvania, it was a small body elected for the whole county. Thus arose the "commissioner" system of elective county boards as distinguished from the "supervisor" system of New York, which two types determined the characteristics of the county system adopted by the later states.

Towns did not, as has been said, develop in Pennsylvania until after the county had been developed to a considerable degree as the area of local representative government, and when established the towns were relatively less important here than in New York, so that Pennsylvania from this point of view approximated more the Virginia than the New England system. At first, in-

deed, town meetings were not even provided for, the overseers of the poor being appointed by the justices of the peace and the supervisors of highways being elected by the voters of the town. Chartered boroughs on the English model appeared as early as 1687 and five such boroughs in all were created during the colonial period, but with the exception of Philadelphia, which had overtaken both New York and Boston in population by the middle of the eighteenth century, the colonial boroughs of Pennsylvania were of slight importance, though they served as the model of the later Pennsylvania system of borough government for villages and towns.

Philadelphia was created a borough prior to 1691, though the charter of that year is the earliest one so far found. The borough freemen in Philadelphia comprised all adult residents who were freeholders or who, possessing personal property to the value of fifty pounds, had resided in the city two years, provided in either case that the admission fee was paid. But the council was renewed by coöperation, that is, vacancies were filled by the council itself. The charter of 1701 provided for life tenure for councilmen while the mayor was appointed by the Governor. The powers of the borough of Philadelphia and the extent to which those powers were used were substantially the same as in New York. The four small boroughs had a simpler form of government and a much more restricted field of activity. The council in these boroughs consisted of two burgesses, one being designated the chief burgess, and a small number of assistants, chosen by the local electors.

The two other middle colonies, New Jersey and Delaware, followed in general the line of development as shown in New York and Pennsylvania, respectively, the former being established as a separate colony by the Duke

of York in 1664, the latter being separated from Pennsylvania by a charter granted by William Penn in 1701. In New Jersey there developed the supervisor system while in Delaware conditions favored the commissioner system. The concentration of population in towns resulted in New Jersey in their relatively greater importance and in the incorporation of five chartered boroughs during the colonial period, whereas in Delaware no charter of incorporation was granted prior to the Revolution.

One other point remains to be mentioned in connection with the system of local government in the colonies which was a characteristic not only of the English system from which the colonial system was derived, but has in a measure continued to the present time. With the exception of the places specially designated as corporations, those being principally the chartered boroughs of which a score were created in colonial times, the areas of local government were not regarded as local corporations with a sphere of action of their own, but merely subdivisions of the state for purposes of convenience in the administration of governmental matters. This was true not only of the counties, which at first possessed only centrally appointed officers, but also of the towns which elected their own officers.[6] Nor did the introduction of the elective principle for the filling of county offices alter the condition of the county from this point of view. Later on, as will be seen, corporate capacity was commonly conferred by statute on towns and counties, but they have continued to be regarded primarily as units of state administration with no inherent local powers of their own. Boroughs and cities, on the other hand, were created primarily for the satisfaction of local needs, though, as has

[6] The Massachusetts towns were accorded a limited corporate capacity in colonial times.

been shown, they were not regarded as possessing a local taxing power unless this was expressly conferred upon them. This general distinction between counties and their subdivisions on the one hand and cities on the other, namely that the former are primarily units of state administration while the latter are primarily corporations for the satisfaction of local needs, continues in a measure today, though cities have tended increasingly to be charged with what may be regarded as state functions.

Local Government from Revolutionary Times to 1800

The adoption of state constitutions by the original colonies was not accompanied by any radical change in the system of local government, for the existing legislation was continued except in so far as altered in the constitutions, and these as a rule contained very little with regard to local government. Such provisions as were included in the Revolutionary constitutions for the most part perpetuated the main features of the existing system.[7] The changes that were made were principally in the direction of altering the method of selecting county officials from that of central appointment to local election, either direct or indirect. Thus sheriffs were made directly elective in New Jersey and Maryland, and in Pennsylvania two nominees were selected by popular vote, one of whom the Governor commissioned, while in Georgia all civil county officers except justices of the peace and registers of probate were made elective. Justices of the peace were not yet made elective but their selection was com-

[7] For the text of the Revolutionary state constitutions as well as of subsequent constitutions in these and the later states see Thorpe, *The Federal and State Constitutions, Colonial Charters and Organic Laws*, Government Printing Office (Washington, 1909).

monly put in the hands of the legislature instead of the governor, in line with the general tendency to curtail the powers of the executive. Furthermore a definite short tenure of office for justices became the rule instead of the former indefinite tenure under which they commonly served in the colonies.

If the Revolutionary state constitutions said little on the subject of county government, there was even less said about municipal corporations or cities. Nevertheless two very important developments occurred in the period between the Revolution and the beginning of the nineteenth century which had a determining effect on American city government from that time on. In the first place city charters were now granted not by the governors alone but by the legislature and the governor in the regular process of legislation. This altered the fundamental character of the city charter from that of an executive grant conferring powers with which the legislature could not interfere to that of an ordinary law subject to repeal or amendment at the will of the legislature. It is true, as has been seen, that even in the later colonial period the cities looked to the legislatures for new powers not included in their corporate charters, but, from the time of the establishment of state governments on, the legislature had complete freedom either to enlarge or to restrict both powers and duties of the cities, a power which they soon began to exercise in the minutest fashion and frequently without regard to the wishes of the city and in a manner detrimental to it. This subjection of the city to the state legislature became one of the unfortunate characteristics of American city government which half a century later led to the introduction of constitutional restrictions on the powers of the state legislatures over cities, culminating finally in the home-rule charter

system. The other novel feature of city government that made its appearance before the close of the eighteenth century was the introduction of the bicameral councils into cities in place of the former single body comprising mayor, aldermen, and councilors. This innovation, exemplified in Baltimore in 1797 and in Philadelphia in 1796, was accompanied also, in the former case, by the first instance of the later universal tendency to set up the mayor as a separate branch of the city government, not elected by the council, who should enjoy the veto and the appointing power. These new features, simply copied from the Federal Government, were destined to become fundamental characteristics of municipal organization in the United States for the next hundred years. Finally may be mentioned the fact that in this period also the type of close corporation, exemplified by Philadelphia, Norfolk, and Annapolis, gave way to the system of popular election of councilors. But as the former system, though characteristic of English boroughs at that time and until 1835, was the exception in the colonies, this can hardly be considered as a new development but rather merely as an extension of what had been the American plan even before the Revolution.

At the close of the Revolution all of the territory of the United States as determined by the treaty of peace was under the theoretical jurisdiction of one or more of the original states. The territory north of the Ohio river was claimed in its entirety by Virginia and in part by Massachusetts and Connecticut. But there were virtually no settlements in all this region up to this time and no local government had been established. When, therefore, in the years 1784–1786 these states gave up their claims to this territory — with the exception of the Western Reserve of Connecticut, which was not ceded until 1800

— the Congress of the Confederation was free to establish a system of local government for this territory without special reference to the local institutions of the claimant states. The Northwest Ordinance of 1787 gave to the governor the power to lay out the territory into counties and townships as well as judicial districts, subject to alterations to be made by the legislature when constituted. These counties and townships were to be election districts for the legislature as well as areas of local administration, and their judicial magistrates and civil officers were to be appointed by the Governor. The first county was established three years later with sheriff, treasurer, coroner, recorder of deeds, probate judge and justices of the peace, all appointed by the Governor. The court of quarter sessions or county court was given authority to appoint township officers, and the areas of the civil townships were usually identified with those of the land survey townships, approximately six miles square. At first the court of quarter sessions acted as administrative and financial authority for the county but later an appointive board of three county commissioners was charged with the financial administration, while the township officers were made elective by the town meeting. But up to the close of the eighteenth century population was sparse and none of the districts tentatively laid out for future states had attained a population sufficient for this purpose. In 1800 the Northwest territory was divided into two districts, the western portion being designated as Indiana Territory.

In the territory south of the Ohio River, Virginia, North Carolina, and Georgia claimed the territory west to the Mississippi River and South Carolina also claimed a small strip of land a few miles wide. But except in the lands to the west of Virginia and of North Carolina

there was scarcely any population at the close of the Revolution. The settled portions of these states west of the Alleghany mountains had become, moreover, practically independent districts, prior to their admission as the states of Kentucky and Tennessee in 1792 and 1796, respectively. North Carolina ceded her jurisdiction over Tennessee to the United States in 1790, and Virginia had previously consented to the establishment of Kentucky as an independent state. South Carolina had ceded her strip in 1787 while Georgia maintained her claim to the western lands until 1802, the southern portion of these lands, however, having been erected into the Mississippi Territory in 1798.

In Kentucky, prior to its admission as a new state, the characteristic Virginia system had prevailed. In the first constitution of 1792 the nine counties were made election districts for senators and representatives and it was provided that the justices of the peace in each county be made appointive by the Governor during good behavior, but sheriffs and coroners were made elective for three-year terms. In the constitution of 1799, however, the county courts, composed of justices appointed during good behavior by the governor, from among two candidates nominated for each place by the court, nominated two of their own number for the position of sheriff, one of whom was then commissioned for a term of two years by the Governor. Surveyors and coroners were also commissioned by the Governor from double lists submitted by the county court, while the clerk of the court, collectors, constables, jailers, and other inferior county officers were appointed by the court itself, thus establishing the self-perpetuating system of county administration found in Virginia.

In Tennessee the constitution of 1796 conferred on

the county courts the power to appoint sheriffs, clerks, coroners, trustees, and constables for the term of two years, the sheriffs and coroners to be commissioned by the Governor. The justices of the peace were appointed by the legislature to hold office during good behavior. The Tennessee system was, therefore, very similar to that of the older Southern states from which the early settlers very largely came.

Local Government from 1800 to 1850

The first half of the nineteenth century was marked by three important phases of special significance in the history of local government. The first comprised the changes that occurred in the system of the older states already established by the end of the preceding century. The second feature of this period was the creation of new states in all of the federal territories comprised within the boundaries established by the treaty of peace with Great Britain. The third important development was the rounding out of the continental domain of the United States by the Louisiana purchase of 1803, the acquisition of Florida in 1819, the annexation of Texas in 1845, the settlement of the Oregon boundary dispute in 1846, and the acquisition of the Mexican possessions by the treaty of Guadalupe Hidalgo in 1848. In these new acquisitions seven new states were created during the first half of the nineteenth century, including California, admitted in 1850.

Local Government in the Old States.—In the old states there were few changes from the system of town and county government existing at the end of the eighteenth century during the first twenty years of the nineteenth, but beginning with the second decade of the new century there were introduced significant changes. One

of these was the progressive extension of the elective principle for the choosing of county officers. This development, which was one of the consequences of the spread of the Jacksonian ideas of democracy, made itself felt in all of the older states during this period, with the exception of Maryland, Virginia, the two Carolinas, and Kentucky. Another important development was the transfer in several New England states, notably in Massachusetts after 1828, of the administrative powers of the county courts to a small elective board of county commissioners on the Pennsylvania model. But few significant changes occurred during this period in the distribution of functions between the county and the smaller divisions, the states being roughly grouped as before into the three classes into which they fell from this point of view in colonial times. Of considerable importance with regard to the place of the county in the governmental scheme everywhere, however, was the development of political parties. The county, being practically everywhere the election district for members of the state legislature and developing furthermore an increasing number of paid elective offices, became at an early period in the nineteenth century the natural unit for political party machines, a development which has not been without its effect on the intimate relation between party politics and county administration to-day. The spoils system particularly, another political growth of the period, has held its own in county administration long after successful inroads were made upon it in national, state, and city government through the so-called merit system in the civil service.

While these changes were occurring in the system of local rural administration in many of the older states, even more important changes developed in the field of

city government.[8] Some of these changes had already been forecast, as has been seen, in the more important charters granted in the closing years of the eighteenth century, while others were new developments of this period. We have seen how Philadelphia and Baltimore were provided with a bicameral council on the plan of the state and national legislatures before the close of the eighteenth century, and how in Baltimore the mayor was created somewhat in the image of the President of the United States. The bicameral feature was extended to other cities in the old states in the period now under consideration, notably Pittsburgh, Boston, and New York. The practice of local selection of the mayor instead of central appointment became the rule during this half century, the earlier charters putting the selection in the hands of the council, the charters granted after 1820, however, generally providing for popular election of the mayor. This served still further to emphasize the importance of the office of mayor and to pave the way for the material increase in his powers which occurred in the second half of the nineteenth century. During this period, however, the council remained the important municipal authority.

Other important developments which occurred not merely in the municipal history of the older states but also in territories and newly admitted states, during this period were the extension of the municipal franchise practically to universal manhood suffrage, the domination of municipal politics by the state and national organizations, and the introduction of the spoils system. The rapid increase in the size of cities during the latter half of the period now under consideration resulted in the granting

[8] See Fairlie, *op. cit.*, pp. 79–85.

of many new charters. Even in New England, where up to the beginning of the nineteenth century the idea of special organization for cities had made no headway against the universal town-meeting system, nine city charters were granted to manufacturing and commercial centers which had outgrown the practicability of government by town meeting. Not only was the number of incorporated cities largely increased, but some of them had attained a size which rendered imperative the grant by the legislature of larger powers, especially of a financial nature. It became common in this period to grant a general taxing power for municipal purposes, but these purposes were limited to those enumerated by the legislature, and for every proposed new undertaking the cities had to resort to the legislature. As the legislatures considered it necessary to go into great detail in these enactments the subordination of the cities to the legislature which began soon after colonial times became more and more complete until the legislatures were submerged by requests for special laws for cities and the cities themselves lost most of their discretion and local freedom. A considerable expansion of municipal activities occurred during this period especially in the larger cities, and many of the activities which had existed only in rudimentary form in the colonial and eighteenth century cities developed under special departments in the new century. In addition to the growth of the activities already noted in the larger colonial boroughs public health authorities were established in some of the larger cities to prevent the introduction and spread of epidemics, but school administration and poor relief continued generally to be considered distinct from city administration.

Local Government in the New States.— Turning now from the states which existed at the beginning of the

nineteenth century to those admitted during the next fifty years we may conveniently group these latter into four classes. The first of these classes comprises the states carved out of the Northwest Territory, namely Ohio, Indiana, Illinois, Michigan, and Wisconsin. The second group consists of the Southern states created east of the Mississippi, namely Mississippi, Alabama, and Florida. The third group comprises the states on the western shore of the Mississippi established in the Louisiana Purchase, namely Louisiana, Missouri, Arkansas, and Iowa. The last group consisting of Texas and California was created out of territory formerly belonging to Mexico and secured for the United States in consequence of the Mexican War. In the systems of local government established in all of these states it will be seen that the determining factors in fashioning local institutions were, first, the traditions of local government brought in by the majority of the settlers, and second, the geographic and economic conditions of the new areas, while in those states which had existed as governmental areas before their incorporation into the United States some heritages of the older systems continued.

We have already noted (page 93) the beginnings of local institutions in the Northwest Territory before the close of the eighteenth century. We will now trace the development of these institutions in the new states formed in this territory during the first half of the nineteenth century.[9] In 1800 Indiana Territory was separated from the Northwest Territory with the local government system already described, and in 1802 the state of Ohio was created out of the Northwest Territory, rounded out by the cession in 1800 of the Connecticut Western Reserve. The offices of sheriff, coroner, and justice of the peace,

[9] See particularly Howard, *op. cit.*, Chaps. iv and x.

appointive under the territorial government, were made elective in Ohio, the justices being elected in the townships, while all town and township officers were locally elected. The quarter sessions at first exercised administrative and financial powers for the county but in the first legislation of the new state all county officers were made elective and an elective board of three commissioners was provided as the administrative and fiscal authority of the county. The townships being of relatively little importance, owing to the scattered settlement of farmers instead of concentration in communities, we find both the governmental traditions of the settlers who came in large part from Pennsylvania, and the physical conditions in the new state influencing the adoption of a scheme of local government modeled very closely on that of Pennsylvania. This type of local government known as the "county-township" system viewed from the point of view of distribution of functions between town and county, in contradistinction to the "county-precinct" system, and as the "commissioner" system, as distinguished from the "supervisor" system, when regarded from the point of view of the constitution of the administrative board, became the characteristic one for the states of the Middle West.

Indiana was admitted in 1816 and followed practically the same model, making all county officers elective and providing an elective board of commissioners.

Illinois had been first settled largely by immigrants from Virginia, the Carolinas, and Kentucky. They brought with them, therefore, a familiarity with the "county-precinct" system of these states in which there were no important governmental subdivisions of the county. Township organization was not included, therefore, in the first constitution or early laws, though the

geographical or congressional township existed here as elsewhere in the Northwest Territory, to the people of which the United States government had guaranteed a section or square mile for the use of schools. All county business was entrusted by the constitution of 1818 to elective boards of three county commissioners, the way for this development having been paved by the systems established a few years before in Ohio and Indiana. All county officers were made elective, including a few years later, justices of the peace and constables chosen in precincts. The first step in the direction of a change from the "county-precinct" system to the "county-township" system in Illinois came with the establishment of the congressional townships as public corporations for school purposes with its own officers. This creation of a limited self-government for the townships led to the same district being subsequently designated as an election district as well as a district for the justices, constables, road supervisors, and overseers of the poor. After the admission of Illinois in 1818 as a free state and the admission of Missouri in 1821 as a slave state, further immigration into Illinois came chiefly from the states to the East, and settled in the northern part of the state. These elements in the population preferred the township system and were responsible for the insertion in the constitution of 1848 of a provision enabling the legislature to provide a system of township organization which any county could adopt by majority vote. This plan of optional provisions permitting two different systems within the same state had already been tried in Wisconsin territory in 1841 and was subsequently introduced in Missouri, Nebraska, and North Dakota. The township system was generally adopted by the northern counties in Illinois, the legislature having provided that the county board in

such counties should be constituted on the "supervisor" instead of the "commissioner" plan.

The next state to be admitted out of the original Northwest Territory was Michigan in 1837. The county system of Michigan Territory, organized in 1805, was the same as that found in the other territories of this region, namely the county-township system, both county and township officers being made elective after 1825. But in 1827 the "commissioner" plan was superseded by the "supervisor" system, the largest immigration into the state at this time being from New York State.

Wisconsin, admitted in 1848, was the last state to be created out of the original Northwest Territory. Beginning with the "county-district-commissioner" system, while still part of Indiana Territory and the first twenty years as part of Michigan Territory, it operated after 1827 under the "supervisor" system until its organization as a separate territory in 1837 when the "commissioner" plan was revived. In 1841 an optional law permitted a choice between the "commissioner" plan and the "supervisor" plan, but the constitution of 1848 established the "supervisor" plan uniformly for the whole state, townships occupying much the same position in the local government scheme as in the other states of this section.

While these two more or less distinct types of rural local government were developing in these five states, there were also important developments in the government of municipal corporations. But these developments were quite similar to those already traced in connection with the history of local government in the older states during this period and did not show marked variations from state to state. The increase in size and number of cities chartered during this period, the extension of the suffrage, the election of the mayor by popular vote, the

increase in municipal activities, the tutelage of the legislatures over the cities, were developments that showed themselves in the states northwest of the Ohio as well as in the older states. Only the bicameral system seemed not to take root as extensively in this section. But party domination and the spoils system became as firmly established in Ohio or Illinois as in New York or Pennsylvania.

Whereas the states of the old Northwest Territory modeled their local government systems on the New York and Pennsylvania plans, Mississippi and Alabama, admitted in 1817 and 1819, respectively, being created out of territory formerly under the jurisdiction of Georgia, modeled their local institutions after those of the parent state. In Mississippi the first constitution made sheriffs and coroners elective, the justices of the peace to be appointed as the legislature might direct. This constitution also authorized the creation of a county court of probate to have control of county police. The constitution of 1832 added justices of the peace and constables to the list of elective offices, and provided for an elective county board of five members, chosen at large, to be called the county board of police with complete jurisdiction over roads, highways, ferries, and bridges and all other matters of county police, thus introducing the commissioner system in place of administration by the county courts. Alabama provided in her first constitution for elective sheriffs and clerks of courts, leaving the justices to be appointed as the legislature might direct.

Florida, after its cession by Spain in 1819, was in 1822 organized as a territory. The appointment of local officers, including justices of the peace, was lodged in the hands of the territorial governor. The first constitution of Florida was framed in 1838–39 but did not take ef-

fect until the admission of Florida as a state in 1845. This constitution left it to the legislature to provide for either election or appointment of justices and also empowered the legislature to establish in each county a board of commissioners for the regulation of county business.

In the period here under consideration four new states were created in the Louisiana territory, along the west bank of the Mississippi. These states differed considerably from each other in their local government traditions at the time of their admission. The first state to be admitted was Louisiana in 1812. Under Spanish rule there had existed large parishes for ecclesiastical administration and when the territory of Orleans was organized in 1804 the legislative council divided the territory into twelve counties, coinciding in some cases with the old parishes, including in other cases two or more parishes. But in 1807 the territory was divided into nineteen parishes which thenceforth became the units of local government in Louisiana, the counties continuing for some years, but as election districts only. Administrative functions were performed in the territory first by the county courts, then by the parish courts, whose judges were appointed by the governor. Little was said in the constitution of 1812 concerning local government except to lodge the power of appointing local officers in the hands of the governor until otherwise provided by the legislature. In the constitution of 1845 the parishes superseded the counties as election districts also, and sheriffs, coroners, justices of the peace, and clerks of the district courts were made elective by the qualified voters of the parishes.

The next state to be admitted from the Louisiana Purchase was Missouri in 1821. In the territory of Missouri, organized in 1812, the governor was authorized to divide the territory into convenient counties for the elec-

tion of members of the territorial assembly, local judicial and administrative officers being appointed by the governor. In the first constitution of the state, sheriffs and coroners were made elective, justices of the peace remaining appointive, and the transaction of all county business was entrusted to county probate courts. In 1834 the clerks of the county courts were made elective. Missouri, therefore, retained during this period essentially the old Southern type of county government.

Arkansas Territory, divided off from Missouri Territory in 1819, was governed in the same way as the older territory already considered. In 1836 Arkansas was admitted as a state under a constitution providing for elective sheriffs, coroners, and surveyors, chosen by the qualified voters of the county, and constables and justices of the peace elected in the township. County courts of the justices of the peace were established as the administrative authorities of the counties. This was essentially the supervisor system since the justices were elected by the townships, though in form it was the old Southern type of county administration by the court of justices. The townships, however, were not units of local government, so that the "county-precinct," or "county-district" rather than the "county-township" type was established, in spite of the terms used.

While the immigration into Louisiana, Arkansas, and Missouri was chiefly from the old Southern states and consequently moulded their local institutions along familiar Southern lines, Iowa, the last state to be admitted during the first half of the century from the Louisiana Territory, naturally followed the compromise system. The commissioner system was established for counties before Iowa became a state, but townships were also established with local officers. Judges, sheriffs, clerks of

court, and justices of the peace were appointed by the territorial governor but other county officers as well as the township officers were popularly elected. The first constitution of the state in 1846 made no change in the existing system except to provide for an elective prosecuting attorney in each county as well as an elective clerk of the district court.

In all of these states, then, the extension of the elective principle, which we have seen characterized county development in the older states, was equally apparent.

Finally, the local institutions of the two other new states admitted in the first half of the nineteenth century, Texas and California, need to be briefly mentioned. Under Mexican rule Texas, as a department of the State of Coahuila and Texas, had a local government system based on the municipalities, of which there were eighteen at the time Texas declared herself independent. The municipalities were large areas including not only villages but considerable tracts of unsettled land around each. Many of these municipalities were established by the American settlers who, after 1820, began to form colonies in the eastern part of Texas. Even under Mexican rule the municipalities enjoyed a measure of local self-government and American ideas of democracy took hold. When Texas became independent and framed a constitution in 1836, these extensive municipalities were made the election districts for members of the Congress of the Republic and were thereafter called counties. The constitution required the establishment of county courts and the provision of elective sheriffs, coroners, justices of the peace, and constables. Under the Republic these provisions were carried out and in addition to these elective officers county boards of commissioners were created consisting of the county judge and commissioners elected by pre-

cincts, with control over highways and bridges as well as poor relief. At the same time the original settlements in the early municipalities were incorporated as towns. These arrangements were continued without change under the constitution of 1845, the first constitution of Texas as a state of the Union,

California, like Texas, was organized for purposes of local government under Mexican rule, but it had a centralized system of administration. With the conclusion of the Mexican War gold was discovered in California and thousands of immigrants flocked thither. Governed at first by a military provisional governor, California developed frontier local institutions in the mining camps which regulated their own affairs. A constitution was framed in 1849 which became effective upon the admission of California in 1850. This constitution adopted the ten existing Mexican districts as electoral units for the legislature, but directed the legislature to divide the state into counties in each of which there should be elected county judges, county clerks, district attorneys, sheriffs, coroners, justices of the peace, and other necessary officers. The first legislature proceeded to organize twenty-seven counties with elective treasurers, assessors, recorders, surveyors, and constables, in addition to the above mentioned officers. But for many years the real local government was carried on by the mining camps under lynch law with little regard for constitutional and statutory provisions. In the first constitution of California provision was made for the organization of cities and incorporated villages by the legislature with restrictions on their financial powers.

Local Government in the New Territories.— Finally there remains to be noted the organization of a number of new territories in the closing years of the period now

under consideration. In 1848 Oregon Territory was organized, in 1849 Minnesota Territory was created, and in 1850 Utah and New Mexico Territories were established.

In Oregon immigrants from the United States had established a provisional government in 1841 and adopted a constitution in 1843 while this territory was still under the joint occupation of the United States and Great Britain and this government continued in operation after the acknowledgment of the title of the United States by Great Britain in 1846 until the establishment of the territorial government in 1849. Under this provisional government counties had already been established and the territorial government did not make any changes in the general system established elsewhere in the territories of the United States.

Minnesota Territory comprised areas that had been under various territorial governments before, notably Wisconsin and Iowa Territories, but immigration had been small and local institutions did not develop to any great extent. Upon the creation of Minnesota Territory it was provided that sheriffs, constables, justices of the peace, and other judicial and ministerial officers in office at that time, within the limits of the territory, should be continued and that the manner of choosing these officers thereafter should be determined by the territorial legislature. Townships had not been organized up to this time as local government areas although it was provided that two sections of each geographical township were to be set aside for school purposes as soon as the government survey should be made.

Utah and New Mexico were both organized as territories within two years of their acquisition from Mexico. Like Texas and California these lands had been organized

under the Mexican system of local government with municipalities and districts which became the areas for the original counties later on. Identical acts of organization were passed for these two territories on the same date, September 9, 1850, anticipating the establishment of county government and providing that township, district, and county officers should be appointed or elected in such manner as the territorial legislature and governor might provide. The customary provision setting aside two sections of each township for school purposes was contained in these laws, but instead of being reserved for the people of each township, as was done in Illinois for instance, the reservation was in general terms for schools in the Territory.

Summary of Local Government in the United States to 1850.— We may now briefly summarize the developments in local government in the United States up to the end of the first half of the nineteenth century. Taking up first the county and its subdivisions we find: (1) in every state in the Union [10] and in every organized territory of the United States, the county was recognized as a governmental subdivision of the state. The functions of the county varied from that of a mere judicial district in Rhode Island to the nearly all important county in Virginia. Generally speaking, however, the counties existed in most states as election, military, judicial, financial, and administrative districts. The extent of the powers of the county under the last two classes of functions varied greatly from state to state, but the old threefold colonial classification on the basis of the relative powers of the county and its subdivisions, namely the New England system where the town was more important

[10] In Louisiana, as was noted, the term used was parish instead of county.

than the county, the Southern system where the county was much the more important and the compromise system of the middle colonies where the functions of finance and administration were pretty evenly divided between the two, was still quite plainly discernible. The compromise system and the Southern system had, generally speaking, moved westward along parallel degrees of latitude into the new states. (2) The elective principle for county officers had made considerable headway in the Eastern states, with the exception of Maryland, Virginia, the Carolinas, and Kentucky, and was generally established in the newer states. (3) Manhood suffrage had almost completely superseded the former property and taxpaying qualifications. (4) The number of county officers had tended to increase but the old offices of sheriff, coroner, surveyor, justices of the peace, and constables were reproduced in the new states together with the newer offices such as treasurers, assessors, collectors, prosecuting attorneys, etc. (5) An elective county board was found in nearly all the states in which the elective principle had been established, which performed the general financial and administrative functions of the county. This board, which appeared under a variety of names, was constituted as a rule on one of two general principles. Either it was a small board elected at large or in special districts, and represented the extension of the original Pennsylvania "commissioner" plan, or it was a larger board elected from the local government subdivisions of the county in imitation of the original New York or "supervisor" plan. The "commissioner" plan had been adopted in some of the New England states and in some of the Southern states by this time and was the one generally adopted by the new states admitted during this period (6) The county, though still regarded as essen-

tially an area for the local administration of state affairs, had been accorded a limited corporate capacity and by reason of the local election of its officers, had become, except in judicial and militia matters, largely independent of any state control except that of the legislature.

In the field of municipal government this period was marked (1) by the incorporation of many new cities including small towns and villages, (2) the development of many cities to large size, (3) the complete subjection of cities to the legislature, (4) the general adoption of the "federal analogy" as a model for city charters, including in a number of the larger cities a bicameral legislature, (5) the subordination of municipal politics to state and national organizations, (6) the establishment of the spoils system, and (7) the adoption of manhood suffrage.

Local Government from 1850 to 1900

During the last half of the nineteenth century the main characteristics of local government in the United States as exhibited at the close of the preceding period were not greatly altered, especially in the field of county government. A good many changes occurred, it is true, in the systems of individual states, and a dozen new states were admitted in this period, each presenting some variations in the county system, but as it is quite impossible within the scope of a general treatment like this to trace the history of local government in each individual state, only the main tendencies and developments will be noted.

In the first place there is to be noted a steady extension of the elective principle for choosing county officers, a continuation of the development which marked the preceding period. This development was most marked with regard to the more purely judicial officers like county judges, clerks of courts, and prosecuting attorneys, which

in general had remained appointive even after the other county officers had become elective. The appointive system retained its hold chiefly in some of the states of the Old South, due in some cases to the desire to eliminate the danger from the votes of the negroes, theoretically enfranchised by the Fifteenth Amendment to the Constitution, and actually participating in local government elections during the Reconstruction Period.

In the same way the reconstruction period saw the attempt to force upon some of the Southern states the township system of the North in place of the "county-district" system. But this was a temporary development only, and in subsequent constitutions there was a return to the old system, though the term "township" remained in some cases to designate what was in reality a mere judicial and election district.

Among the new states admitted to the Union in the territories of the West during this period, the township government was established in the Dakotas, Nebraska, and Kansas, the two Dakotas and Kansas adopting the "commissioner" type, while Nebraska followed the "supervisor" system. The states farther west, however, did not develop a township organization but followed the tendency already noted in the preceding period of granting corporate powers to very small communities, and using the county as the real unit of local rural administration.

Another characteristic of this period was the increasing attention devoted to local government in the constitutions. Whereas, as has been seen, the earliest state constitutions barely mentioned local government, the constitutions of this period, in which not only new states adopted constitutions but almost all existing states revised their constitutions one or more times, contained exten-

sive constitutional provisions relating to local government, both rural and urban. This tendency was the consequence of the growing popular distrust of the legislature which led constitutional conventions not only to insert a host of expressed limitations on the powers of the legislature but also to fill the constitutions with legislative details which had formerly been left to the legislatures. With regard to county government these provisions covered a variety of subjects such as the manner of creating new counties, dividing or consolidating existing counties, the location of the county seat, the enumeration of county officers, their qualifications, terms of office, and method of selection, as well as careful enumeration of their powers and duties, the taxing and borrowing powers of the counties, and a prohibition on special legislation for counties.

Finally may be noted as a general tendency of this period the development of a measure of state administrative supervision and control over counties, to offset the virtual independence of the locally elected officers, regarded though they were as state officers and carrying on chiefly what were considered as state or general functions. Especially in the matter of finances and education was a beginning made of administrative control, though public health, poor relief, and even highways were to some extent brought under the supervisory control of state administrative boards or commissioners, as will be seen later on.

Turning now to city government [11] we find more important developments during this period than in the case of county government. But unlike the distinguishing characteristics of county government, developments in the municipal field were not connected with geographical

[11] See Fairlie, *Municipal Administration,* pp. 81–102.

sections of the country. Certain of the developments of this period were nearly universal throughout the United States, others were found in a large majority of the states, still others were discernible only here and there, while, finally, some constituted exceptions to the general situation but were important as showing tendencies that have become established within the last two decades.

First of all, then, may be noted the fact that the phenomenon of urban concentration, while less marked in the United States than in England, nevertheless showed a significant increase of intensity in this period. A larger and larger share of the country's population was congregating in cities. Many new cities were created and many of the existing cities took on metropolitan dimensions.

The creation of new cities, which up to 1850 had regularly been accomplished by special legislative acts of incorporation for each city, now became the subject of constitutional provisions requiring the legislature to proceed by general law for the incorporation of cities and forbidding special legislation. Though these restrictions were frequently nullified as regards the larger cities, which were the very ones intended to be protected, by the device of minute classification, whereby laws general in form as to a given class of cities actually applied to one city only, general municipal codes now began to appear. In four states, beginning with Missouri in 1875, constitutional provisions accorded to cities of a certain size the right to frame their own charters, the beginning of the so-called home-rule charter system, which during the last twenty years has been extended to more than a quarter of the states.

With the increase in the size of the cities had come a more than corresponding increase in the activities, resulting in enormously enlarged expenditures. Particularly

in the field of public works, which necessitated enlarged borrowing and taxing powers, was this expansion noticeable. As this expansion involved the creation of large city payrolls and the awarding of important contracts, or, where the city itself did not undertake to supply the needed public services, the grant of valuable franchise rights, the city became the strategic ground for the political parties with their spoils system. Corruption and inefficiency, therefore, accompanied this era of expansion. Not until towards the end of the period did municipal reform begin to come into its own and by directing public attention to the evils of municipal government and pointing out possible remedies, such as the adoption of the civil service merit program, and the separation of general and local elections, pave the way for a real improvement in municipal conditions.

But while the powers and activities of cities in general increased during this period, the position of the council continually declined. As new functions developed they were in the main entrusted to separate executive officers or departments and not given over to the council, which had begun to suffer, like its parent the state legislature, from popular distrust. In some cases certain of these functions were directly performed by state boards or commissions. But gradually the tendency manifested itself to concentrate the administrative powers in the hands of the mayor. He had long had the veto power and was beginning to acquire an increasing power of appointment and even of removal, after the likeness of the national executive, though the council usually participated in one or both of these manifestations of administrative power. On the organization side, therefore, this period may be said to have marked the gradual substitution of the strong mayor type for the conciliar type of city government.

As a legislative body we have already seen in the preceding period how the city council had declined to a position of virtual impotency because of the minute exercise by the State legislature of its power over local matters.

Developments in Local Government since 1900

In the last twenty years there have been some interesting developments in the field of county government which may be briefly noted here. Some of these may fairly be said to represent general tendencies while others are but isolated instances. Some of the latter, however, being the result of more or less organized movements, may be considered as having a larger significance than would at first appear to be the case if they are viewed merely as exceptional variations.

In the first place it may be noted that the increasing attention paid to county government in the constitutions which, as we have seen, has been a pretty steady development from the first, has continued to make itself manifest in constitutions framed since 1900 as well as in constitutional amendments adopted since that time. So the Virginia Constitution of 1902 contains a special article devoted to the organization and government of counties, as do also the constitutions of the three new states admitted since 1900, Oklahoma, Arizona, and New Mexico.

In the next place may be mentioned a tendency in recent legislation to enlarge the scope of activities of the county beyond the long recognized functions already enumerated. This is manifested in such activities as public education, public health, libraries, parks, and the improvement of agriculture, etc.

Thirdly there has been a marked increase in the development of state administrative control, a tendency which began, as has been seen, in the last half of the nineteenth

century, but which has been accentuated in the last twenty years in almost all phases of county activity, notably in the fields of finance, poor relief, health, highway matters, and to a small extent in police matters.

Among interesting, though isolated, phenomena, may be noted the grant of home rule to counties in California, the consolidation of cities and counties, as in California and Colorado, and the extension of the civil service merit system to county employees in New York, New Jersey, Ohio, and locally in a few other instances.

Finally may be noted a significant development which, though extra-governmental, has already had a considerable influence on developments in the field of county government and is destined to have an ever increasing one. That is the inauguration of reform agencies specially interested in the county problem. Until within a very few years practically no attention has been devoted to the study of the county system nor have systematic attempts at the solution of its problems been launched. Now there are national associations like the Short Ballot Association, the National Municipal League, and others emphasizing the county problem, and national conferences on county government are being held, while such institutions as the New York Bureau of Municipal Research and the Russell Sage Foundation are undertaking county surveys. State conferences on county government and local county taxpayers' associations are beginning to appear which tend to focus public attention on the obscure but important problems of county government, while universities are beginning to offer special courses in this field. Although these developments are almost a generation behind the mobilization of similar forces for the study of municipal problems, they give promise of exerting a like influence on the future evolution of county government.

In the field of municipal government there have been some very significant new developments within the past twenty years as well as a continuation of important tendencies noted in the last half of the nineteenth century.

First of all, the process of urban concentration, that is the congregating of an ever larger proportion of our national population in cities, has continued without abatement in the twentieth century. Our largest cities have attained dimensions equal to those of the largest cities of the world, and the number of cities of more than a hundred thousand population has increased in the last twenty years from thirty-six (1900) to sixty-eight (1920). Corresponding to this increase in the size of the cities and to the modern realization of the obligations imposed upon them to care for their inhabitants, the activities of cities and their expenditures have increased even more rapidly than their population.

On the organization side one of the most important developments of the past twenty years has been the spread of the constitutional home-rule charter system to nine other states and the voluntary grant to cities by the legislatures of other states of the right to adopt charters according to their own wishes.

Two new types of city government have made their appearance in the last two decades, commission government and the city manager plan, which have supplanted the traditional mayor-and-council form in some five hundred cities, chiefly of the smaller size.

Independently of these new types of city government there has been progress in the direction of divorcing local and national political issues through the adoption of nonpartisan ballots and the separation of city and general elections, the more extended application of the merit system of civil service, the adoption of instruments of di-

rect popular control in the form of the initiative, referendum, and recall, and the improvement of methods of finance administration.

These last developments have in large part been the result of an awakened popular interest in improved city government stimulated and made effective through the same sort of agencies as those mentioned above in connection with the county, and antedating the latter by nearly twenty years.

CHAPTER III

THE ORGANIZATION OF COUNTY GOVERNMENT[1]

Physical Characteristics of American Counties.—Counties exist as geographical subdivisions in every state in the Union with the single exception of Louisiana, where the corresponding area is called parish. According to the Census of 1910 there were in the forty-six states and two territories of continental United States

[1] The most comprehensive description of county organization is to be found in Fairlie, *Local Government in Counties, Towns, and Villages,* Part II. The older work of Howard, *Local Constitutional History,* is now too much out of date to be valuable except for historical purposes.

Brief discussions of county organization found in such standard general text books on government as Beard, *American Government and Politics,* Third Ed. (New York, 1920), Chap. xxix, and Munro, *The Government of the United States* (New York, 1919), Chap. xxxviii, are in the main mere summaries of Fairlie's treatment cited above.

There are a number of studies of county government in individual states, many of which, including the school texts for the government of the various states, are listed in the bibliography in Fairlie, *op. cit.,* pp. 275–279. The most important additions to this list comprise papers in the volume on "County Government" of the *Annals of the American Academy of Political and Social Science,* XLVII (May, 1913), to which should be added Mathewson, *The County System of Connecticut* (New Haven, 1917); James, "County Government in Texas," Bulletins of the University of Texas (1917); and Maxey, *County Administration* (New York, 1919), a study of county administration in Delaware.

In recent years there have appeared a number of studies of individual counties conducted by the New York Bureau of Municipal Research, the Russell Sage Foundation, and local civic bodies and research bureaus. A number of these are contained in the volume

some 2,950 counties, about a hundred new counties having been created in the ten preceding years. The process of creating new counties having continued in the last decade, there are now more than three thousand such divisions. The number of counties in each state varies from three in Delaware to 253 in Texas, the average number being something over sixty. But the variation in the number of counties in each state corresponds only very roughly to the variations in the areas of the states.

In area the counties varied in 1910 [2] from twenty-four square miles in Bristol County, Rhode Island, to more than twenty thousand square miles in San Bernardino County, California. The average area of the American county is something over a thousand square miles, a figure that corresponds very closely to that of the English counties and is less than half as large as that of the

entitled *Documents on County Government* collected by the National Short Ballot Organization.

The list of reports, pamphlets, and articles on special aspects of county organization and administration is now too formidable to be reproduced here. A select bibliography on county government taken from a list prepared by the Library of Congress published in Appendix II to James, "County Government in Texas," contains a comprehensive list of these articles. Gilbertson, *The County* (New York, 1917), also includes many of these, in the bibliography on pp. 275 *ff.*

The texts of state constitutions may be conveniently found in Kettleborough, *State Constitutions* (Indianapolis, 1918), and an analysis of the constitutional provisions relating to counties in force in 1915 may be found in the *Index Digest of State Constitutions* prepared for the New York State Constitutional Convention Commission in 1915, pp. 197–292.

Statutes relating to county government are to be found in the codes, revised statutes, and session laws of the several states. The statistics as to area and population of counties are to be found in the abstract of the Thirteenth Census of the United States, 1910.

[2] Not including the sixteen cities of Virginia which are listed as separate counties, five of which had an area of only one square mile each.

area of the French departments.[3] But this average is unduly affected by the areas of the large but sparsely settled counties in the Western states, which are in the process of being divided into smaller counties as population increases. To represent the typical county area, six hundred square miles would be a more correct figure, the number of counties with a larger area than that being very nearly equal to the number with a smaller area. In general the counties of the newer states, especially those admitted since 1850, are considerably larger than those of the older states, and quite commonly the constitutions establish minimum areas for the creation of new counties.

In population, the variations in counties are even greater than in area, extending in 1910 from sixty-five in Cochran County, Texas, to more than two million seven hundred thousand in New York County, New York. The average population was something over thirty thousand, as compared with ten times that figure in the English counties and fifteen times in the French departments. But here again the average is misleading for the great majority of counties have a smaller population than that figure, and twenty thousand would more nearly represent the typical county. The population of the counties grouped by sections, varies roughly inversely with their size, for the typical western counties contain less than ten thousand people, while the counties of the North Atlantic states average well over one hundred thousand people.

Whether viewed, therefore, from the point of view of size, population, or density of population, the American county is very much less important than are the corresponding areas in England and France, a fact that must not be lost sight of when instituting comparisons or

[3] See Chap. i, pp. 15, 44.

reaching conclusions as to the character or scope of functions that should be entrusted to the counties, especially as these factors exercise a determining influence on the financial resources of these units.

From the foregoing description of the physical features of the American county it will be readily seen that it is very difficult to make any other than the most general statements on this point which will hold true for any considerable number of counties. Nevertheless it may be of interest to note that from the point of view of the distribution of population in counties they may be divided into several classes which will show differences of real importance in the consideration of their governmental needs. First there is the class of rural counties, that is, counties which contain no cities of any magnitude, even the county seat, which is generally the largest urban community in the county, scarcely attaining a population of five thousand. This class includes by far the greatest number of counties and may be regarded as the typical case, though with the continuing concentration of population in urban centers and the general increase in population, the number of counties in this class will necessarily decline. In the next class may be grouped those counties in which there are one or more cities of considerable size, let us say of twenty-five thousand inhabitants or more, the county seat being usually among such cities. According to the 1910 census there were 229 such cases. Most of these cities are the only cities of twenty-five thousand or more inhabitants within their counties, though in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island, there were counties containing as many as three cities of this population. Even where there was only one such city in the county, the general rule in this class of counties, this city usually comprised

more than one-half of the population of the county, but only a small part of the area. Of the fifteen largest cities in the United States in 1910, New York City comprised five counties within the corporate limits, Philadelphia, St. Louis, Baltimore, San Francisco, and New Orleans had identical boundaries for city and county, and the nine others contained a percentage of the population of the county in which they were located varying from 52 per cent in Pittsburgh to 90 per cent in Chicago.

A third class of counties, less numerous than the first but more numerous than the second, comprises those in which there are several cities smaller than twenty-five thousand in population but nevertheless presenting urban conditions and interests distinct from those of the strictly rural portions of the county. This situation, which presents some governmental problems of its own, is met with very generally in the more thickly populated states, and is likely to become more and more common with the increasing urban concentration. In New York, for instance, there were in 1910 127 incorporated places of between 2,500 and 25,000 inhabitants in the sixty-one counties; in Pennsylvania 243 such places in sixty-seven counties; and in New Jersey 74 in twenty-one, or on an average more than three such incorporated places in each county.

The Creation and Abolition of Counties.— Turning now from the geographic and demographic characteristics of counties to the manner of their creation, it is to be noted first, that the creation, alteration, and termination of counties lies within the lawmaking power of the states, except so far as limited by the constitution. At first there were no such limitations inserted in the state constitutions, but, owing in part to the abuse of this power for political purposes by the legislatures, state constitu-

tions now quite commonly contain such limitations.[4]

In the first place the constitution itself may, as in Georgia, name the existing counties without reserving to the legislature the power to create new counties, in which case constitutional amendments are required to create new counties. But that is distinctly an exception, for while most constitutions name the existing counties as election districts for the legislature and as judicial districts, they expressly permit the creation of new counties by the legislature.

The power to create new counties is limited in a number of states by a variety of qualifications. Firstly, half a dozen constitutions insist that the creation of new counties shall be by general and not special law. Secondly, an equal number require the approval of a majority or more of the inhabitants of the territory to be created a county. Thirdly, half of the state constitutions specify a minimum area for new counties. This minimum figure varies from 275 square miles in Tennesse to 900 in Texas, but the majority of these constitutions, including states in every portion of the Union, prescribe four hundred miles, or about that, as the minimum area.

Fourthly, sixteen constitutions prescribe a minimum population for new counties varying from 700 in Tennessee to 20,000 in Pennsylvania, some of them requiring a population sufficient to entitle it to a representative in the legislature on the basis of the existing ratio. Fifthly, four constitutions prescribe minimum tax values of from a million to two and a half million dollars. Sixthly, half a dozen constitutions forbid lines of new counties to run within a specified distance of the county seat of existing counties.

[4] See *Index Digest of State Constitutions,* "Counties," pp. 197–213.

Another feature of county constitution that is made the subject of express limitations on the legislature in a number of state constitutions is the matter of change of boundaries. Half a dozen or more constitutions require a general law, and a larger number insist on approval by the voters of the portion to be taken from an existing county and added to another county, while in some cases approval of the county to which the territory is to be added is required. Restrictions as to the minimum area of the old county from which portions are to be taken off are somewhat similar to the provisions with regard to the minimum area of new counties noted above, and the prohibition against cutting counties within a specified distance of the county seat of the old county is also found in some states.

When new counties are created out of old counties, or portions of one county are added to another, a number of constitutions require that the severed portion shall be liable for its proportion of the indebtedness of the old county, but only three constitutions assure to such severed portion its share of the assets of the county from which it was taken.

The location and removal of county seats being one of the aspects of county organization in which improper political considerations proved to play an undue part in determining the action of the legislature, these matters have been made the subject of constitutional limitations in three-fourths of the states. The commonest limitation in this regard is the prohibition against local or special legislation, but over half of the constitutions also require approval of the local electorate, frequently requiring an extraordinary majority, and limiting the intervals at which proposals to change the county seat may be submitted.

Finally, the power of the legislature to abolish counties has been limited by constitutional provisions in a few states, requiring the approval of the electors both of the counties to be abolished and of the counties to which the territory is to be added.

All these constitutional provisions, and this is true of many other of the constitutional provisions relating to local government, have a larger significance than might appear merely from a consideration of the number of states in which they exist, for they represent general principles prevalent with regard to county organization which have been followed by legislatures voluntarily in many of the states in which they are not established on a constitutional basis.

General Features of County Administration.— With regard to the officers of the American county certain general features can also be discovered in the constitutional provisions regarding them, particularly in the later constitutions which have shown the general tendency to go into legislative detail in this regard as in others. In part these provisions, like those with regard to area, population, boundaries, etc., considered above, were inserted for the purpose of limiting the power of abuse involved in the otherwise unrestricted right of the legislative branch of the government to deal with counties. In part, however, they represent a crystallization of what was considered the best legislative practice at the time they were inserted, and so they tended both to make permanent the features which were then approved and to serve as models for constitutional and legal provisions in other states. In this connection it is well to point out the obvious fact that this tendency toward minute constitutional provisions concerning county government is one of the great hindrances in the way of

needed reforms, owing to the general difficulties involved in the process of constitutional amendment. Particularly is this true, when, as is the case generally with regard to proposed reforms in this field, the general public is practically not informed on or interested in the existing weaknesses, whereas the well organized political forces frequently have a selfish interest in perpetuating the existing régime.

An examination of the constitutional provisions with regard to county officers, discloses that in fully one-half of them provisions are found relating to the composition and functions of an authority for the management of county affairs, called variously the county court, the county board, the board of commissioners, the board of supervisors, or in one case, Georgia, the ordinary, who in that state acts as the county authority. Some thirty state constitutions provide that there shall be courts for each county, variously called county, probate, superior, or orphans' courts, with one or more judges for each. More than three-fourths of the state constitutions provide for a sheriff in each county, to be elected in every case by the voters of the county, and a number of the constitutions contain provisions as to the qualifications, term of office, manner of removal, etc., of this officer.

Besides the constitutional establishment of county boards, county courts, and sheriffs in a majority of the states, there is a long list of county officers established by the various constitutions, some of which, like the coroner, are prescribed in a majority of the states, others appearing in a few constitutions or in a single constitution only. This list includes, among the more general officers, besides those named above, assessors, auditors, clerks of courts, county clerks, collectors, recorders, surveyors, treasurers, and superintendents of schools.

With regard to these county officers, as well as with regard to county officers to be created by the legislature many of the constitutions contain express stipulations as to qualifications, method of selection, official bonds, compensation, term, removal, and the filling of vacancies. The prevalent method of selection for most of the county offices specified in the constitutions is election by the qualified voters of the county. Half of the state constitutions require the office of prosecuting attorney in each county, under a variety of names, to be elected, in the majority of cases, by the voters of the county.

Many of these constitutional provisions with regard to county officers are reproduced by legislation in many of the states which do not include them in their constitutions, and are therefore fairly descriptive of the system of county officers established in the United States.

The term of office for county officers is fixed in a number of constitutions at a period varying from two to eight years, the shorter term being quite general in the western states. Four-year terms are prescribed in a number of Southern states, while Virginia specifies a term of eight years for the county clerk, but four years for other county officers. This plan of having varying terms for different county officers is not uncommon, though in a number of constitutions, particularly in the Western states, the constitution fixes a period, commonly two years, for all county officers alike.

Most county officers are still paid by the fee system but a few state constitutions in the West have prescribed salaries for county officers in place of fees, and this movement has been followed by similar legislation in other states.

Elective county officers are usually removable after trial by the superior courts for neglect of duty or malfeasance

in office, or for conviction of crime. In a few states the Governor is given authority to remove county officers and the constitutions of ten states make county officers, except judges, subject to recall.

The electoral qualifications for voting for county officers are, in general, the same as those for state officers and are to be found for the most part in the constitutions themselves. A residence within the county is specified in most of the constitutions, varying from thirty days to one year. Adult manhood suffrage, extended to include woman suffrage in more than a third of the states by constitutional amendment and in others by legislation to non-constitutional offices, with educational qualifications in a number of the states, is the almost universal rule. With the adoption of the Nineteenth Amendment suffrage distinctions based on sex have now, of course, disappeared. Property and taxpaying qualifications which were formerly universal have now all but disappeared, though a dozen states permit or require the payment of a poll tax as a condition precedent to voting.

Finally it may be noted that a number of state constitutions contain prohibitions on local or special laws with regard to county organization and officers, though classification of counties for purposes of legislation is expressly permitted in some of the states and is resorted to in others in virtual nullification of the constitutional provisions.

The County Board

Types of County Boards.— Among the multitude of county officers now found by constitutional and legislative provision in the various states of the Union there is in every state, a general authority to which are entrusted more extensive powers than are accorded to any of the

other officers, as the duties of these others are for the most part restricted to one particular phase of administrative activity. This authority is commonly entrusted with the "management of county affairs" or the "transaction of county business," but this general designation serves rather to distinguish the nature of this authority from that of the special officers than to define its powers, for these are limited none the less to those specifically entrusted to it, which, as will be seen, show considerable variations in the different states. If, however, powers are conferred upon the county and not entrusted to designated officials, it would seem that they would reside in the general county authority.

It is to be noted in the first place that this general county authority is the representative body of the electors of the county, especially chosen, except in a few states, for this purpose. These exceptions include chiefly Connecticut, where the members of the county board are chosen by the legislature, Georgia, where the "ordinary" or elective probate judge is given these general powers, and a few states where the original English and colonial institution of constituting the justices of the peace in quarter sessions the general county authority is still to be found.

This general elective county representative body is variously designated the county board, the board of county commissioners, the board of supervisors, the county court, the levy court, the fiscal court, and the commissioners' court.[5] In the manner of their composition there are still clearly distinguishable the two main systems which developed in colonial times, commonly designated as the "commissioner" and "supervisor" types, although these designations are no longer accurate owing

[5] In Louisiana it is called the police jury.

to a discrepancy between the terms applied to the boards and the manner of their composition in various states. But on the basis of their composition they can be divided into those that are composed of representatives of the subordinate divisions of the county existing for purposes of local government, and those that are composed of representatives of the electors of the county, whether chosen at large or in special districts constituted for this purpose. Much the largest number of states have county boards constituted on the second plan, which was the original Pennsylvania plan, the representation of local government units on the county board, which was originated in New York, having spread to relatively few other states. But the constitutions of eight states assure to the county electorate a local option on the question of adopting one or the other of these types.

Where the county board is constituted on the plan of representation of the county electors, whether chosen at large or by special districts, it is usually a small body of from three to seven members. Where it is made up of representatives of the townships, the number will vary from an equally small number to as many as fifty, depending on the population, and especially on the density of the population of the county, which determines in a measure the number of subordinate units to be represented. Twenty to twenty-five members is perhaps the average size of the boards of supervisors. But it is to be noted that this method of representation easily can and frequently does result in very unequal representation, since the population of the units is very unequal and urban units are at a disadvantage as compared with rural districts.

The term of office of the members of the county board is usually either two or four years, the shorter period

being common in the states west of the Mississippi. Members of the board generally receive a *per diem,* though in some cases a salary is paid and in a few others the members receive fees for their services.

Which of these two general types of composition of the county board is the most satisfactory will depend somewhat on the nature of the duties entrusted to this authority. If it is chiefly an administrative rather than a deliberative body, it is obviously too large. If it has important deliberative or legislative functions, the small number of three commissioners, originally provided in Pennsylvania and adopted in a considerable number of other states following this plan, would be too small to secure adequate representation. But the modern tendency towards a reduction in the size of city councils even for the larger cities, would seem to indicate that the county board need not be large in order to insure adequate representation even when a considerable measure of legislative power is conferred on a unit of local government. As compared, however, with the representative bodies of the French department, namely, the general councils of the prefecture, even the boards of supervisors are not more numerous, nor will they average in number half as many as the councils of the English administrative counties.

One of the striking features of these American county boards is the absence of any chief executive officer. Although in this regard the American county is like the English county, this lack is the more striking in the United States since not only the national government and the state governments, but even city government, in imitation, as has been seen, of the other units, were organized on the principle of the separation of powers which lodged the chief executive power in the hands of an in-

dividual instead of a composite body. The explanation of this variation from the general governmental theory in this country is undoubtedly to be found in the fact that counties in the United States were from the first and still are to-day considered primarily as units of state administration, not as areas with local needs, and therefore subordinate legislative powers were not conferred on them as was done in the case of incorporated urban areas. There being virtually no local legislative powers to perform by the county authorities, there was, therefore, no room for the application of the doctrine of the separation of powers in the county board. With the development however, of legislative or at least quasi-legislative powers in the county, involved in the levying of taxes, the undertaking of public works, and the establishment and management of county institutions on an increasing scale, as well as a limited ordinance power, the need for an officer of the county board with special executive powers began here and there to make itself felt and was met in a few instances, notably in New Jersey and Cook County, Illinois. In a few Southern states,[6] it is true, the county judge figures in a varying degree as the chief officer of the county administrative authority, but not primarily as a result of the recognition of the need of a chief county executive officer.

The Powers of the County Board.— Turning now to the scope of authority conferred on these county boards we find the greatest variations not only in the different states, but also, owing to the fact that special legislation with regard to counties has not been as effectively forbidden as in the case of cities, among the counties within a given state.[7]

[6] Georgia, Arkansas, Texas, and Alabama.

[7] The powers and functions exercised by county officers are taken up more in detail in Chap. iv.

First may be considered the legislative powers of the county board. These are practically limited to the power of levying taxes and appropriating moneys for the purposes authorized by law. With but very few exceptions the county boards in all states exercise this power, which from the point of view of the taxpayers of the county is the most important of their powers. This is in its nature a legislative power which makes it important that the body exercising it should be constituted on a representative basis. The limitations imposed by constitutions on this taxing power will be considered later on.

Closely related to the power to levy taxes is the power to borrow money for specific purposes, which appears in the constitutions of many states in the form of limitations on the amount, purposes, and manner of contracting debts which can be authorized by the legislatures.

Much of the money raised by taxation or by means of loans is levied by specific taxes the proceeds of which are applicable only to the purpose for which they were raised. But there is also usually a general county fund from which money may be appropriated for a variety of purposes, and this appropriation is the complementary legislative function of the county board.

The purposes for which money can be raised and expended are so varied in different states that it is difficult to make any statements that are even generally true. But among those purposes, generically known as "county purposes," certain ones are very generally found. So the power, which is at the same time a legal duty, to construct county buildings, especially courthouses and jails, is almost universal. Scarcely less general is the power of the county to construct roads and bridges, though the extent of that power is affected by the extent of the duties imposed upon subordinate divisions of the county in this

regard. Less extensive is the power accorded to counties to construct other public buildings such as poor houses, asylums, and more recently hospitals and libraries, while other public works such as irrigation works, drainage works, levees, and similar public utilities are in some cases entrusted to counties in those states in which these improvements are most needed. Poor relief is another common county purpose which, like the construction of roads, dates back to the earliest counties. To these functions may be added expenditures for school purposes and more recently for public health purposes. Finally the county boards provide the salaries for such of the county officers as are salaried.

Aside from these powers of raising and appropriating revenues, some additional ordinance powers are sometimes lodged in the county boards. So four or five state constitutions expressly authorize the legislature to confer on the county boards a local ordinance power, and at least three state constitutions [8] confer express power on counties to "make and enforce within (their) limits such local, police, sanitary, and other regulations as are not in conflict with general laws," while the Maryland constitution lodges in the councils of counties acting under the home-rule amendment full powers to enact local laws in conformity with an express grant of powers to be made by the legislature. Five state constitutions make express mention of the power of county authorities to grant public utility franchises. But in spite of these express constitutional authorizations, which, however, are not necessary in order to enable the legislatures to confer powers of local legislation on county boards, the long established tradition of American state legislatures to deal in great detail with matters of local government has

[8] California, Idaho, and Washington.

operated to limit the legislative powers of county boards, in the vast majority of cases, practically to the financial powers discussed above. Herein lies one of the main distinctions between the county representative bodies and those of the incorporated urban units, for while the former have very limited legislative powers, the latter are usually entrusted with a considerable amount of local ordinance power.

Fundamental among the questions relating to county government is the one as to the extent of local legislative powers that should be granted to the county. This is a question that arises more naturally in connection with the discussion of county functions in the next chapter and will be taken up there. But, as has already been pointed out, it has an important bearing on the question of the composition of the governing authority of the county. For a policy determining body the important consideration is to make it truly representative, while for a purely administrative authority wieldiness and concentration of authority are fundamental.

Much more extensive than the legislative powers of the county boards are their administrative functions. These fall into a variety of classes, some of which are very generally found lodged in the county boards, others only met with here and there. Perhaps the most general of these powers is that of authorizing the disbursing of the county funds in accordance with the appropriations. The power to allow claims against the county partakes somewhat of a judicial character, but, coupled with the power of making appropriations and entering into contracts, it results in the county board having complete control over the raising and spending of moneys virtually without any check. A considerable number of states provide county auditors, as will be seen, but they do not,

except in rare instances, act as comptrollers, that is they do not examine into the legality and propriety of payments before they are made but rather merely check the accounts at regular intervals after the expenditures.

Another common administrative function of the county boards is the control over the county property. This includes the care and repair of the courthouses, jails and poorhouses, as well as the repair of the county roads and bridges. With the tendency now apparent of increasing the number of county institutions to include hospitals and libraries this phase of the activity of county boards seems destined to increase.

In connection with the conduct of elections county boards are commonly charged with the duty of canvassing and making returns. In a number of states also the county boards exercise a limited licensing power.

Most of the important county officers being independently elected the county boards have only a very limited appointing power. Some of the officers which they are permitted or directed to provide, such as road officers, health officers, and superintendents of county institutions, are within the appointing powers of the board, but they are not usually very important or attractive positions.

In the same way the county board has only a very slight administrative authority over the subordinate divisions in the county. In many states, it is true, they may establish districts within the county, but except in a few instances where they exercise some control over the local finances their supervisory powers are very limited. Perhaps the most general of these powers is that of equalizing the tax assessments for county purposes made by the authorities of the minor divisions of the county.

Keeping in mind the fact that there are the greatest variations in the position of the county boards in different

states, it is generally true that except in the metropolitan counties the post of county commissioner is not attractive either from the point of view of compensation or influence. It does not loom large in the public imagination and yet it makes considerable demands on the time of the incumbent. In consequence it is very likely to be filled by men of inferior caliber, and even to the professional politician it does not figure as a stepping stone to more important positions. The positions are, therefore, likely to be awarded to the distinctly subordinate political workers who have established some claim upon the county boss or machine. The place of the county in the political party organization, and the reflex of this position on county government, have already been touched upon in the treatment of the historical development of the county and will be referred to again in various connections.

Judicial Officers

The County Judge.— The county, in the great majority of the states, is a district for the selection of judges. But the title, jurisdiction, and functions of these judges vary greatly in the different states and also in the various counties within a single state. With the exception of the New England states these judges are almost universally elected by popular vote. In a considerable number of states there are judges known as county judges, sometimes as the only judge elected in the county, sometimes in addition to other judges. In a few states there are judges elected for smaller divisions than the county, but generally speaking the county is the smallest division in which judges, other than the justices of the peace, are chosen. In many of the states, on the other hand, counties are grouped into districts for the election of district or circuit court judges, but even in these states the larger

counties commonly constitute such districts for themselves and may elect in addition to the county judge a judge for the higher court. In many of the states where there is no regular system of county courts there are special probate courts with judges elected in each county.

County judges are usually invested with a limited original civil and criminal jurisdiction, an appellate jurisdiction over the justices of the peace, and probate jurisdiction. In some states, as has been seen, the county judges exercise in addition to their judicial functions an administrative authority, a survival of the original position of the county court in colonial times, and in a very few cases the county judges have purely non-judicial functions. Not all the states having county judges, even when these exercise a considerable civil and criminal jurisdiction, require any special qualifications in the way of legal training for the office. Their term of office varies from two to six years. They are commonly paid a salary, though in some instances the remuneration is *per diem* or by fees.

Where the judges chosen in each county are the judges of superior courts or courts of general jurisdiction they are generally required to be attorneys of a certain number of years standing, receive a higher compensation, and serve for longer terms than do the county judges. They can usually act also in other districts than the one for which they are elected.

The county judges, even where their functions are primarily or wholly judicial, are, as has been seen, almost everywhere elective. The question of the expediency of choosing these officers by popular election stands on the same footing, so far as they are judicial officers, as that of the general merits of popular election of judges. This method of selecting judges even for the highest state

courts is the prevailing one in the United States. It is, however, rather the result of that general tendency to make all public officers elective which characterized the developments in the first part of the nineteenth century in the United States, than of a deliberate conviction that judges as such should be elective. On the principle that only policy determining officers should be elective nothing can be said for popular election of judges, certainly not for the election of the inferior judges. On the other hand the corollary proposition that officers who are elected are necessarily political officers, if not politicians in the odious sense of that word, undoubtedly applies to the case of judges as well as to other officers. It is, of course, true, that the right to appeal from their decisions tends to keep the inferior judges in line with the interpretation of the laws by the higher judges, but it must not be forgotten that a great many cases are for various reasons, chiefly perhaps because of the delay and expense involved, never taken up to the higher courts, and that the handling of cases in the inferior courts may work an injustice under the conduct of incompetent or biased judges that is never righted. Especially do these considerations enter into the administration of criminal law where a discharge or acquittal may be brought about by the trial judge through ignorance or for improper considerations, and there is no appeal on behalf of the public.

The office of county judge is usually a position that does not appeal to the best or ablest elements among lawyers, and the control of the office by the county political ring has figured in more than one case of public scandal where he has used his powers to prevent the punishment of privileged offenders. Election of these judges is objectionable, therefore, not only because this method is not suited to picking men for positions that should re-

quire special training and ability but because it makes possible a local anarchy in the administration of justice when the judge owes a direct and immediate responsibility to those who put him into office and only an indirect and incomplete responsibility to the state whose laws he is charged to administer. This weakness in the system of local administration of justice appears, as will be seen, in connection with the other county officers connected with the enforcement and administration of the law to an even more marked degree, but is serious enough in the case of the judge to demand serious consideration.

Similarly the union of judicial and administrative powers in the hands of the county judge, such as occurs in some of the Southern states especially, presents objectionable features in that the qualifications needed for the two kinds of functions are not ordinarily to be found united in the same individual.

In a later chapter some attention will be devoted to the question of the proper place of the judicial officers now so commonly found a part of the county organization in the United States. It may be well to remark here, however, that no officer corresponding to the elective county judge in the United States is to be found in the local government systems of either England or France, or for that matter in any European government.

The Clerk of Court.— County courts being generally courts of record there is a clerk provided for these courts, and also in those counties forming part of a larger judicial district and in which there is no separate county court a clerk of court is chosen for the county. In a majority of the states, therefore, there is a county officer commonly called the clerk of the court, and in some cases, just as there are more than one judge chosen in each county so there are more than one clerk of court when the county

constitutes the geographic jurisdiction of more than one grade of court. In most states the functions of clerk of the court and of county clerk [9] have been combined in one and the same person, some of the states giving the officer the one title, others the other, and a few states have separate officers for the two functions. This union of functions is a survival of the English system, perpetuated in a measure in some of the American colonies, where the clerk of the court of quarter sessions acted in that capacity for both the judicial and the administrative functions of the court.

County clerks of court are almost universally elected, four of the New England states providing for appointment. The term of office varies from two to eight years, the shorter term being the more common. No personal qualifications are required as a rule for this office, except the customary ones with regard to residence, citizenship, and age, prescribed for electors, and sufficient as a general rule for any county office except that of judge or prosecuting attorney.

The clerks of court perform the clerical and routine administrative business of the court such as keeping and preserving the records of proceedings, guarding the property of the court, issuing writs, and in general performing most of the non-judicial functions connected with the trying of cases. The other functions commonly performed by these clerks in their capacity as clerks of the county and secretary to the county board will be considered under the head of county clerks below.

As ministerial officers of the courts there is even less reason for the election of clerks than in the case of the county judges, for their functions hardly admit of the exercise of discretion at all, but on the other hand re-

[9] See p. 170.

quire a certain technical knowledge which can be secured, if at all, only by the process of appointment from among qualified candidates.

The County Attorney.— In more than half of the states the constitutions provide for a county officer to act as public prosecutor, and by legislation such an office is found in about three-fourths of the states. This officer is generally designated as prosecuting attorney, county attorney, state's attorney, solicitor, or district attorney, with special names in a few states. These officers are chosen for larger judicial districts than counties in about a quarter of the states, especially those in which there are no county courts with criminal jurisdiction, but even in these states, as has been seen, individual counties frequently constitute judicial districts or circuits by themselves and prosecuting attorneys are then chosen for the county.

The beginnings of this office were noted in the discussion of the historical development of counties when Connecticut in 1704 established the office of local prosecuting attorney to assist the attorney-general of the colony, a precedent followed by one or two other colonies and afterwards followed by the other states in their constitutions and laws. This was a departure from the English system of the administration of criminal law and there are to-day no officers in the English counties corresponding to the prosecuting attorney in the United States.

These prosecuting attorneys are popularly elected in virtually all the states in which they occur for a term of from two to six years, the two- and four-year terms being the most general. Aside from requirements of residence in the county, citizenship, and in some states an age requirement greater than twenty-one years, a number of states require admission to the bar or a certain number

of years of law practice as qualifications for the office. But for this office as for that of county judge some states are content with such vague and unenforceable qualifications as that he should be "learned in the law," while in still others no legal training is prescribed either by constitution or by statute.

A certain number of states provide that the prosecuting attorneys shall be paid salaries, usually varying with the population of the county, but more frequently the attorney is paid either in whole or in part by fees. Where, as is not infrequently the case, there is no limit to the sum collectible in fees, and the income of the prosecuting attorney is dependent on the number of convictions secured, or worse still on the number of indictments secured by him, the fees may provide an immoderate income. In some of the metropolitan counties particularly, prosecuting attorneys have been charged with becoming wealthy through their undue activities in promoting prosecutions. A few states provide that the salary of the prosecuting attorney shall be borne partly by the state and partly by the county.

As the fee system of paying public officers which is so general in the counties of the United States, presents some of its worst phases in connection with the prosecutor's office, it may be appropriate to touch briefly here on its general relation to the problem of good government, for the system though sufficiently discredited by convincing proof of its evils is not without its supporters even outside of the circle of those who profit by it directly or indirectly. Established originally to meet primitive conditions when official acts were relatively few and officials devoted only part of their time to public duties, it has now not only outlived the circumstances under which it was once almost necessary, but has become a source of

positive evil. It is sometimes justified in preference to the salary system on the ground that the person directly benefited by the service pays for it instead of the general taxpayer. Even if that were a sound reason, it would not justify the practice of permitting the public official to retain the fees or a portion of them for his own remuneration without definite limits. In fact in many states the system has been modified to the extent of prescribing a maximum beyond which the proceeds of all fees shall be turned over to the county treasury. Where that has not been done, the remuneration received by some county officials in the larger counties is out of all proportion to the salaries paid to other public officials as well as to the services rendered. But a number of the public acts for which fees are charged are just as proper charges on the general county treasury as is the cost of public education, which is assessed as well on those who have no children to profit by the schools as on those who have. From the point of view of the official, the fee system has been defended on the ground that it acts as an incentive for the diligent performance of his duties. But the situation already described with regard to the prosecuting attorney's fees for indictments or convictions shows that there is furnished an equally powerful incentive to undue official activity for the purpose of swelling the officer's income. Much better is the system of assigning to every official enough duties to occupy his full time, provide him with an adequate salary and the necessary assistants, and then establish effective means of seeing either that his duties are properly performed or that someone else be put in his place. The opposition of the politicians, however, who find in the fee system a source of political patronage has prevented its abolition except in a relatively few states so far.

Prosecuting attorneys are usually removable on conviction for crime or malfeasance in office, in some states by the recall, in a few instances by the Governor, independently or on address of the legislature, and in a small number of states by action of the legislature itself.

The duties of these local attorneys are two-fold. In the first place, and much the more important of his functions, is that of representing the state in bringing indictments and prosecuting defendants, or in the bringing by or defending suits against the state. In the second place they act as the legal representatives and advisers of their counties, bringing or defending suits in which the county is a party.

In the first-named capacity the prosecuting attorney is clearly an agent of the state, and is in fact one of the most important officers in enforcing the criminal laws of the state. Prosecutions for the more serious crimes must by the constitutions of most of the states be based on presentments or indictments by the grand jury, but in a number of states offenders guilty of offenses cognizable in the county courts are to be proceeded against either by indictment or presentment or by information of the prosecuting attorney, and in some states only by the latter method. In any event the prosecuting attorney plays a very important rôle. While he cannot prevent the presentments or indictments by the grand jury, it depends in large part on his diligence in collecting evidence and presenting cases whether the grand jury will have any basis on which to return a true bill. Where cases may be brought on information alone the prosecuting attorney has an even more decisive influence on what offenders will or will not be prosecuted. This power involves the possibility of serious abuse either by the unjustifiable accusation of innocent persons or, what is even

more serious from the point of view of the public at large, the improper failure to institute proceedings against persons properly chargeable with crime. When it is remembered that both of these phases of the prosecuting attorney's activities apply to a large number of local officers, both as regards their private and their official acts, it can readily be seen how close is the connection between possible discrimination or favoritism on the part of the prosecuting attorney and the interests of the dominant political powers in the county. The office is one that is peculiarly filled with temptations, combined with an almost complete irresponsibility except to the political powers that put the incumbent into office, while at the same time the most serious obstacles stand in the way of the most effective use of the position for the general good.[10] Small wonder then that periodically uncovered scandals show the prosecuting attorney to be the keystone in the organized system of corruption in public office established by county political bosses or political machines or rings.

At its worst, then, the prosecuting attorney's office may be the cloak for covering corruption in public office. At its best, however, the position as at present constituted presents a serious aspect. Even if the prosecuting attorney represents truly the electorate of his county by whom he is chosen, he personifies the local veto power over state laws, to which reference has already been made in the discussion of the county judge. His duty is to enforce the laws of the state by bringing offenders to justice, but his interest is to act in accordance with the sentiment of the majority of the county voters. When, as

[10] See an article "The Public Prosecutor: His Powers, Temptations, and Limitations" by Howard S. Gans, in *Annals of the American Academy of Political and Social Science,* May, 1913, p. 120.

is not infrequently the case, particularly in the urban counties, the majority local sentiment is opposed to the enforcement of a particular state law, the prosecuting attorney who would be reëlected to his office or who would desire the approval of his fellow citizens for greater political honors or for mere personal gratification will naturally follow the desires of his supporters. He is supposed to be the servant of the people of the state as a whole, but actually he is accountable only to the county electorate. He cannot serve two masters whose commands conflict and so he obeys the one who put him into power and can keep him there, thus introducing local anarchy within the state and encouraging a dangerous attitude of contempt for all law.

In his capacity as prosecuting attorney, therefore, the county attorney is not properly a county office at all and should not be locally elected. As a pivotal officer in the enforcement of state laws he should be an appointee of the state executive department and absolutely responsible to it.

There is, however, as we have seen another aspect to the office of county attorney. He acts as the legal representative and advisor of his county. The county, as will be seen in the succeeding chapter, is now almost everywhere a corporation to the extent at least that it can sue and is liable to suits in the courts in contract and to a less extent in tort. The county attorney institutes these suits or defends them on behalf of the county. Furthermore, the county board and the various county officers are continually in need of legal advice as to proposed action and this the county attorney is supposed to furnish. In this capacity he is, of course, a distinctly local officer and should be locally chosen. But even regarded from this angle, the county attorney should be appointed by the

county board and not chosen, as he almost universally is, by popular election, on the well recognized principle that officers whose functions are administrative and not political, and for the performance of whose duties special technical qualifications are required, cannot be effectively selected by popular election.

It would seem, therefore, that the union of these state and local functions in the county attorney present a paradox similar to that already found to exist in the office of county judge in many states, which can be avoided only by the separation of these functions, and entrusting the former to state officials and the latter to local officials.

Owing to the outstanding and rather spectacular features of the prosecutor's office in the large urban counties, to say nothing of the financial attractiveness presented, the position is frequently sought by men of real ability, though the fundamental importance of the office for purposes of political offense and defense urges the political party organization to unusual efforts to secure its control. But in the smaller counties where the position does not loom large in the public imagination, considerations of personal fitness are likely to become altogether secondary as compared with political orthodoxy from the point of view of the controlling political forces, and the post is very likely to be awarded to inconspicuous but meritorious party workers. With the separation of the activities of prosecuting attorney from those of legal representative and advisor of the county as a local government incorporation, the political importance of the office would be considerably diminished and the pressure for control of the office by the county machine might perhaps be sufficiently lessened to make possible appointments chiefly on the basis of merit and qualifications for the office.

The county attorney in the larger counties is sometimes provided with assistant prosecuting attorneys, whose salary and powers are usually fixed by the legislature. Presumably a county should not be required to supply other legal counsel than the official attorney and such assistants as may be found necessary. And yet in a certain New York county where there was a county attorney receiving $3,000 a year, the county paid out to another attorney the sum of more than $13,000 in fees for services which should have been performed by the county attorney.[11]

The Sheriff.— The sheriff, it will be remembered, is the oldest county officer in England, dating from Anglo-Saxon times and assuming the position of prime importance in the county under the Normans. Later on he lost some of his preëminence to the royal courts on the one hand and to the justices of the peace on the other, but at the time of the founding of the American colonies he was still the most important of the county officers in England and was introduced in nearly all of the colonies when counties were established. To-day he is found in the counties of every state in the Union, and exists as a constitutional officer in more than three-fourths of the states.

In the colonies the sheriff was originally appointed by the central authorities, as in England, but he was one of the first of the county officers to be made elective. To-day all of the constitutions that prescribe the office of sheriff make him elective and in every state except Rhode

[11] Rockefeller, "County Government from the State Comptroller's Standpoint," in the *Proceedings of the Third Meeting of the Conference for the Study and Reform of County Government*, 1914, p. 18, to be found in the collection of *Documents on County Government* issued by the National Short Ballot Organization.

Island, where the sheriffs are chosen annually by the legislature, the office is filled by popular election. The most usual term of office is two years, but in a number of states it is four years and in a few three years. More than a third of the state constitutions impose restrictions on re-election to the office, a limitation not ordinarily found in connection with the county offices so far considered. These restrictions in general take the form of prohibitions on reëlection to succeed himself immediately, but do not prevent subsequent reëlection after the lapse of a term. The reason for this limitation will appear from the considerations of the duty of the office, though they would seem to be as applicable to the position of prosecuting attorney just considered as to that of sheriff.

There are as a rule no qualifications required for the office other than the usual one required of electors, but in some states a higher minimum age is prescribed. Most states, however, require official bonds, by constitution or by law, for the faithful discharge of the duties of his office. This is the more important where, as is done in some states, the county is expressly relieved of liability for the acts of the sheriff.[12] The sheriff is paid either a definite salary, or, more commonly by fees, or by a combination of both, and in any case the office is, from a financial point of view, one of the most desirable of the county offices. Although general statistics as to the income received from fees by sheriffs are not available, it is known that in the larger urban counties where the fee system prevails and the maximum is not fixed by law, the office is one of the most lucrative in the state, and with the exception of the President's office better paid than are any Federal positions. Even the salaries for sheriffs

[12] See the succeeding chapter for a discussion of the legal liability of the county for the acts of its officers.

fixed by law are higher as a rule than those paid to other county officers.[13]

The sheriff is removable by the governor in New York, Michigan, and Wisconsin, is impeachable by the legislature in a few states, is subject to recall in a few others, and is generally removable after trial and conviction for malfeasance in office.

Although the sheriff's position has diminished greatly in importance as compared with his original powers, he is probably the most outstanding as well as the most universal of county officers. His powers, generally speaking, fall into two classes. On the one hand he is the local representative of the police functions of the executive arm of the state government for the preservation of public safety; on the other hand, he is the executive officer of the courts, charged with executing their judgments and decrees. In addition to these two principal forms of executive activity, the sheriff performs a variety of administrative functions varying in different states, but not constituting anywhere his most important activities.

As the representative of the state authority for the preservation of law and order he must actively prevent, if possible, the commission of crime, and in case an offense has been committed he must apprehend the offender and keep him in custody. In times of public disturbance, such as strikes, riots, and attempted lynchings the position of the sheriff becomes one of great importance, and personal qualifications of bravery, cool headedness, and tact are demanded. The sheriff may appoint special deputies to assist him, may summon the manpower of the county, known as the *posse comitatus,* or even call on the governor for aid with state troops. But in ordinary times the

[13] The sheriff of New York county receives a salary of $12,000, and in addition about $60,000 in fees. Gilbertson, *The County,* p. 51.

power of the sheriff to prevent crime is very limited, for he does not command an organized force similar to that maintained in the cities for purposes of patrol. The cities, towns, and other subdivisions of the county have as a rule their own local police officers whose duty is analogous to that of the sheriff in this regard, but they are not under his control and so far from assisting him may in fact come into conflict with him or his deputies when the latter attempt to act within the territorial jurisdiction of the former, although the power of the sheriff extends nominally over the whole of the county. In the strictly rural portions of the county, where there are no local constables or police, the sheriff should exercise his important function of protecting persons and property through the prevention of crime, but in order to do that effectively he should have at his disposal an organized force of rural police for patrolling the rural highways. Such a force might be a state force, such as is found in one or two states, and in France, commanded locally by the sheriff as a state officer, or a county police force such as is maintained in the English counties. Where the county is given a local police ordinance power as has been seen to be the case in certain states, there would seem to be the same reason for a local police force as in the case of cities with their local ordinances to enforce. At present it may be said that in the rural portions of our counties there is virtually no police protection in the vast majority of the states.

In the performance of his duties to arrest offenders against state laws it can readily be seen that the sheriff occupies a position analogous to that of the prosecuting attorney. With the exception of the more serious crimes and when the offenders are known, the prosecuting attorney and the grand jury will necessarily have to rely to

a considerable extent on the ability and diligence of the sheriff in arresting violators of the law before there is any possibility of proceeding against them. Even where the offenders are known and indicted, the sheriff must secure their persons before criminal proceedings can be continued. It is possible, therefore, for the sheriff, as it has been seen to be possible for the prosecuting attorney, to be guided in the performance of his duties as an agent of the executive arm of the state by local pressure and influence. It is true that there is less room for the exercise of discretion in the case of the sheriff than in the case of the prosecuting attorney, and that neglect in the performance of his duties can be more easily shown, but considerable opportunity exists here also for the nullification of the state law by officers elected by the county.

As the sheriff properly performs no local political functions he should not be elected, and as his duties as conservator of the peace are almost everywhere entirely in the execution of state laws, he should theoretically be centrally appointed, controlled, and removed. In France and in continental Europe generally, the corresponding police officers in the units of local government occupy that position. In England, however, there has been the strongest opposition to central control of police, in spite of the obviously state-wide aspect of this function, and in the English counties, as has been seen, the police force is a county force locally selected, disciplined, and removed, with the Home Office exercising a power of inspection by virtue only of its power to withhold the national subvention, which covers about half the cost of maintaining the local police. In this country too, as will be seen, various attempts at state control of police in cities have aroused the intensest local antagonism, resulting in the abandonment of the attempt in various states where it

has been tried. Perhaps there would not be the same local opposition to state police for the counties, as community consciousness is much less developed in counties than in cities, and so a real state police system for counties might be practically as well as theoretically the best. On the other hand, antagonism toward the enforcement of state laws is not as pronounced in the rural counties as in the cities, and a county police force under the control of the sheriff, himself subject to state supervision, might prove satisfactory.[14]

The duties of the sheriff as a police officer are, as has been said, only a part of his functions. He is also the officer for carrying out the findings of the courts. It is commonly the duty of the sheriff to "attend all courts of record, either personally or by deputy. He also executes such processes as under the practice of the court may be directed to him. Witnesses and jurors are thus summoned by him to appear before the court; arrests and attachments of property are made; and executions are levied to enforce final judgments."[15] The sheriff is also responsible for the county jail and its inmates, and is commonly charged with the execution of prisoners condemned to death. In all these capacities the sheriff acts as a state agent, not as a local officer, and his responsibility should be to the state, not to the county, although in that case the county should not be held responsible for neglect of his duties, as it sometimes is by statute.

[14] See a pamphlet entitled "Why New York Needs a State Police" published by the Committee for a State Police, and contained in the collection of *Documents on County Government*, issued by the National Short Ballot Organization. Also an address by Ernest Cawcroft, "The Sheriff and a State Constabulary," in the *Proceedings of the First Conference for Better County Government in New York State*, to be found in the same collection of documents.

[15] Baldwin, *The American Judiciary*, p. 136.

In addition to these state functions, the sheriff is charged in a number of states with local functions in the county. The most general of these is the duty of acting as county tax collector, particularly in several of the Southern states. As the proper performance of the sheriff's state functions would fully occupy the time of the sheriff in all but the smallest and least populous of counties, there is no need of adding any local administrative duties to the sheriff's functions and thus combining a local phase with his state activities.

The sheriff may usually appoint his own deputies, to a number fixed by law or by rule of the courts, and at a salary determined by law or by action of the county authority. Special deputies may be authorized in time of public disturbance. The deputies are the agents of the sheriff, who usually is liable for their acts and may require a bond for his protection. In some states the prohibition against reëlection to the office of sheriff is extended to prevent a deputy sheriff from becoming sheriff for the succeeding term or *vice versa*. These provisions are intended partly to insure against the perpetuation of abuses in the powerful and largely uncontrolled office of sheriff, and partly are a mere constitutional or statutory recognition of the popular doctrine of rotation in office. They would not appear, however, to warrant special emphasis in the case of the sheriff's office.

The Coroner.— Another ancient English officer of the county, introduced into the county system of the American colonies and perpetuated in most of the states of the Union, is the coroner. In the early beginnings of the office in England, the position was one of considerable importance, for the coroner acted as a sort of general assistant to the sheriff in addition to duties especially assigned to him as "crowner," or personal representative

of the crown, to look after the local interests of the latter. But in England the office had declined greatly in importance by the time it was introduced into the American colonies, and in the American states to-day the office is relatively limited in power. Nevertheless it exists as a constitutional office in nearly half of the states and by statute in most of the others.

Like most of the other county officers, the coroner is elected by popular vote in the great majority of states. But in a few states he is appointed by the governor, and in a few others by the courts. With a few exceptions no special qualifications are required for the position though, as will be seen, the duties of the office are such as to demand special qualifications for their proper performance. The term of office is ordinarily the same as for other county officers, varying from two to four years. The office is paid by salary or fees or a combination of both, the payment by fees received from the county treasury being the prevailing method. It is not uncommon to find more than one coroner in the larger counties, the number varying with the population of the county. In the larger urban counties the office involves a very considerable public expense. The coroner is removable in the same way as are most of the county officers, on conviction for crime, or malfeasance in office. In a few states he is subject to recall the same as other county officers and, more rarely, in Wisconsin, for instance, by action of the Governor.

The main duties of the coroner relate to activities in cases of death supposed to be due to violence.[16] He must hold an inquest in such cases to determine whether or

[16] See an article by Oscar Schultz, "The Coroner's Office," in the *Annals of the American Academy of Political and Social Science* (May, 1913), p. 112.

not death has been due to violence, meaning particularly unlawful means, and if so to fix if possible responsibility for the death and to aid in the apprehension of the person or persons suspected of criminal responsibility in connection therewith. For this purpose he impanels the coroner's jury, usually consisting of six persons, who view the body, hear witnesses, and receive instructions on the law from the coroner. The coroner in this capacity performs two different kinds of acts. He judges of the cause of the death from a medical standpoint and the method by which that cause was put into operation from a legal point of view. The basis for sound conclusions as to the first of these inquiries must rest in a special degree of medical knowledge. The proper conclusions and method of procedure in reaching them as regards the second aspect of his functions require a special knowledge of criminal law and the factors that are important in the detection and proof of crime. The coroner as a rule has no qualifications for his office from either point of view and it is safe to say that a coroner who possesses ability in both these directions is still to be found. And yet nothing short of this union will enable a coroner properly to perform the duties imposed upon him by law. As a result, the functions of the coroner's office are, generally speaking, a farce. But if his activities were merely useless, the situation would not be as bad as it is, for he is in many cases a positive hindrance to the accomplishment of the very purposes for which his office is supposed to exist. Through ignorance or clumsiness he may destroy evidence of crime which is essential to conviction and the prosecutor's work is frequently hopelessly prejudiced by the amateurish meddling of the coroner.[17]

[17] See an article by Joseph Du Vivier, "The Abolishment of the Coroner's Office," *Proceedings of the Conference for the Study and*

It is obvious that there is no justification for the popular election of such an officer as the coroner, for he is in no sense a policy determining officer, and his duties require very special technical qualifications. The office is of real importance only to the county political machine and the logical cure for this excrescence on the county organization is complete removal. The medical aspects of the coroner's functions can better be entrusted to medical examiners who will act under the direction of and in harmony instead of at cross purposes with the prosecutor's office. This method is followed in Massachusetts, New Jersey, and New Hampshire, and, since 1918, in the counties within New York City.[18]

In addition to the main duties of the coroner noted above he is charged in a number of states with other duties, frequently wholly unrelated to his main function. In many cases he is constituted a sort of vice-sheriff and may succeed to the office if vacated during a term. But in no case are the other duties of the coroner of sufficient importance to require the retention of an office which has been the subject of general ridicule in England for centuries and of concerted attack by thoughtful public opinion in this country for more than half a hundred years.[19]

Justices of the Peace.— The justice of the peace in England was and still is a county officer, that is, he is appointed in almost all cases for the county as a whole. The same arrangement was generally followed in the American colonies and in the early states. With the introduction of the elective principle for justices of the

Reform of County Government, January, 1914, published by the New York Short Ballot Organization. To be found in the collection of *Documents on County Government, op. cit.*

[18] Gilbertson, *op. cit.,* p. 134.

[19] Fairlie, *Local Government,* etc., p. 115.

peace and the general establishment of subordinate districts within the county, the justices of the peace have come to be chosen for the smaller districts, though with a jurisdiction extending over the whole county. Hence they are still generally regarded as county officers, and in a few states, as has been seen, the locally elected justices still act in a body as the county board and so are truly county officers. But in view of their local election and usual exercise of powers over a limited jurisdiction, they can more conveniently be considered in connection with the discussion of the organization of these subdivisions.

County Finance Officers

The County Assessor.— A county officer that is found in virtually all of the states having the so-called county-district scheme of government, as distinguished from the county-township system, is the officer who makes the assessments of property for purposes of taxation, commonly called the county assessor. In early colonial times this function was generally exercised by the justices of the peace and was one of their most important functions. But before the end of the colonial period the power of assessing taxes was transferred in most cases to the county boards of commissioners or supervisors, the original assessment or the supervision of assessments by townships being, indeed, one of the principal reasons for the original establishment of these authorities. Gradually, however, special county assessors were created in most of the states having the distinctively strong county system.

County assessors, in a few cases under different names, are popularly elected in virtually every state in which they are found, the term of office being generally two years, though in the Southern states four-year terms are not

uncommon. In at least ten states the office is elective by constitutional provision. No special qualifications are required, in general, for the office, though its duties require for their proper performance special knowledge. Assessors are paid either by fees or by salary, the former system being the most common, the assessor usually receiving a certain percentage of the property value assessed. Assessors may usually appoint assistants under proper authorization at a compensation fixed by them or by the county board.

The duties of the assessors in general are to list all property and persons subject to taxation. Appeals are usually allowed to the county board, acting as a board of equalization, and the action of the assessors is subject to constitutional and legal limitations, enforceable in the courts. But in spite of this control, the office is one in which favoritism and discrimination easily creep in and are not readily corrected. The fair and equal valuation of property is at best a difficult undertaking, requiring an understanding of the elements that enter into the market value of real estate which can be acquired only by considerable experience. Furthermore, as the statements of the property owners are ordinarily accepted as the basis of the valuations, and the raising of assessments by the elective assessor is likely to cost him a political supporter, the evils of popular election for short terms as a method of filling this office are apparent.

But even if the assessor were appointed by the county board, as he undoubtedly should be, there is another problem in connection with the county assessor similar to the one that we have seen to arise in connection with the judicial officers of the county. For purposes of county revenue the valuations of the assessor are a matter of local concern, and the county might be left to its own devices

so far as the state is concerned, even though its action may run counter to express constitutional and legislative instructions and commands. But the same officer acts as a direct agent of the state in that state taxes are levied on the basis of the valuations made by these same county assessors. Here we have a repetition of the familiar comedy of county government in which an officer responsible to the county electorate is charged with the performance of a duty for the state the proper execution of which is sure to run counter to the wishes of his bosses. The state collects its general property taxes from the counties on the basis of the assessed valuation. The lower the assessments, therefore, the less will any particular county have to contribute to the state treasury, and an ignoble strife is engendered among county assessors — and this is true in general of the local assessing authority, whatever its name or composition — to see who can be most successful in relieving the county of its fair share of state taxes. Meanwhile the state administration, almost universally, stands by, capable of seeing but incapable of correcting these abuses.

The solution of this difficulty is not so simple, however, as it would appear to be in the case of the judicial officers of the state who appear as county officers. The proper field of action of the latter is with reference to the state alone and they are not properly entrusted with local functions. The assessment of taxes, however, is a function that must be performed for every governmental area that has the power to levy a general property tax, namely the state, the county, and the taxing units within the county. Since the market value of property, however, when properly determined by any authority is a fixed quantity, no matter for what sort of taxes it is being assessed, there is obviously no reason for having

more than one assessing authority. But shall that authority be a local authority or a state authority? The results of entrusting the function to locally elected assessors independent of the state administration have proven too generally ludicrous to leave the advocates of the existing system much ground to stand upon. Ohio in 1913 took a step toward trying the opposite plan, namely the making of the assessor's office a state office to be filled by appointment of the Governor and to be free from local politics. It never had a chance to prove its merits or defects, for it was unpopular in its very conception and the law was repealed by the succeeding administration.[20] It seems safe to conclude that this experience of an otherwise progressive state shows a fundamental aversion to the plan of making the tax assessors purely state officers.

There remains, therefore, the possibility of keeping the assessors local officers, but appointed instead of elected, for the reasons given above, subject, however, to state supervision and control. A number of states, as will be seen later, have state boards for the purpose of equalizing assessments in the various subdivisions of the state. But these boards for various reasons have been singularly ineffective and can hardly be said to have improved the existing situation perceptibly. But within recent years, particularly since 1900, state tax commissions have been established in more than half of the states with powers of supervision over local assessments, with some marked results. Probably these powers can be made sufficiently effective to protect the vital interests of the state without doing the violence to the feeling of local autonomy that is involved in the central appointment or removal of officers who perform functions that are in part of a local character. It may be well to recall that in England the

[20] Gilbertson, *op. cit.*, p. 111.

assessment of local taxes is in the hands of officers of the poor-law parishes whose valuation, though not binding on the county districts, boroughs, and parishes are ordinarily accepted by them as the basis of their rates.

In those states in which there are no special county assessors the assessment of property for taxation is either entrusted to some other county officer, or, more commonly, it is a function of the township or town, usually with some measure of supervision by county authorities. This is the system in all of the New England states, in New York, and in most of the states that have followed the New York plan. In five or six states both systems are found within the same state.

Finally, in some states the tax assessor performs some other duties in addition to those connected with the assessment of property, though it is rare that he is charged with other local duties of any importance.

Tax Collectors and Treasurers.— In half a dozen states the collection of taxes is entrusted to a special officer called the tax collector, popularly elected like the other county officers. In a few states the sheriff retains this portion of his ancient functions in addition to his judicial duties, and in some others other county officials act in the capacity of collectors. But in the great majority of states the taxes are collected by the county treasurers.

In the colonies the collection of taxes was in some instances entrusted to the sheriff, as in England, but as early as 1654 Massachusetts created the elective office of county treasurer to attend to this and other aspects of the administration of county funds. To-day the office of county treasurer is a constitutional one in over a third of the states and is found by statute in virtually all of the other states. In all but a few of the states these officers are

popularly elected, the method of selection in the others being generally by the county board. The term of office is commonly two years, though four-year terms are also found. In a number of states there is a limitation against immediate reëlection, similar to that found in connection with the office of sheriff. The law usually requires the putting of the county treasurers under heavy official bonds for the proper handling of the public funds that come into their possession.

Treasurers are paid by fees or by salary, the latter becoming more common, though in some states both sources of income are permitted. But perhaps the most remunerative phase of the county treasurer's activity comes from his freedom of choice in selecting the bank in which the county funds shall be deposited. This is sometimes received directly in the shape of interest on the deposits, as in many cases the law does not provide that such interest shall accrue to the benefit of the public treasury. But even where that is provided, the treasurer frequently becomes the recipient of gratuities from the banks he selects as the depository. Figures are not generally available as to sums so received, but an idea of the financial returns to the incumbent in the larger counties may be gathered from the fact that in Cook County, Illinois, the net income of the office in recent years is estimated to have amounted in a four-year term to something between $200,000 and $500,000;[21] and in 1906 Hamilton County, Ohio, recovered $200,000 from former county treasurers for gratuities received by them from the banks which they selected as depositories.[22] Investigations in other counties have shown the net income of the treasurer's office, legitimate and illegitimate, to be so large as to

[21] Gilbertson, *op. cit.*, p. 51.

[22] Fairlie, *op. cit.*, p. 124 note.

make the office most desirable from a financial point of view.

The duties of the county treasurers are in the first place to receive the state and county taxes, and in some cases those of the subdivisions of the county, either directly from taxpayers or from special collectors where those are provided. The state funds are then turned over to the state treasury, the funds of the subordinate units to their treasurers, and the county funds deposited in banks. In addition to the taxes the treasurer commonly receives other county funds, such as fines, fees, and income from property.

The treasurer is made responsible for the proper disbursement of county funds and he is not permitted to pay out moneys except in accordance with the provisions of the law. But owing to the general lack of proper accounting methods for the counties and inadequate supervision by other local or state authorities, the greatest laxness exists in regard to the handling of the public funds by the county treasurers. In recent years there have been a number of investigations into this phase of county administration either by unofficial bodies or by state officials in those states where state supervision of accounts has been introduced, and the cases in which illegal disbursement of county funds has been discovered are so numerous as to justify the conclusion that as a general rule either through out and out corruption or through inefficiency and carelessness, county funds are depleted to a large extent by illegal payments.[23]

[23] For specific instances of these illegal and illegitimate practices in connection with the office of county treasurer reference may be made to the investigations in Cook County, Illinois, and Nassau and Orange Counties, New York, comprised in the collection of *Documents on County Government*, prepared by the National Short Ballot Organization.

An inevitable consequence of the financial attractiveness of this office and its almost complete freedom, until within recent years, from control or even investigation, has been to make it especially desirable from the point of view of the county political machine. The position requires not merely personal integrity, though that is a prime requisite in view of the opportunities for financially profitable irregularities, but also ability in the keeping of accurate accounts and the efficient administration of finances generally. From what has gone before it is clear that the position of county treasurer is not one that should be filled by popular election, since the duties of the office are in no proper sense political. So far as the treasurer handles the public funds of the state or of the subordinate divisions of the county, he should be subject, of course, to supervision by authorities distinct from the county government. But as his main responsibility is in connection with county funds, he should be appointed by the county board and subject to continuous and independent audit in order to insure effective control of his custody of the county funds. Even as a purely local officer he can properly be required by the state to keep his accounts in a prescribed manner and to make regular reports of his activities.

The County Auditor.— An officer of more recent origin and one much less generally found than the treasurer in the states of the Union is the county auditor. In only a few states does the constitution require such an officer but in more than a dozen other states the office is found by statute, either by general law for all counties or counties of a given size, or for particular counties only. In some of the states the auditor is appointed either centrally or by the county board, but generally this office like the rest is popularly elected. In some cases, as in Michi-

gan and Pennsylvania, there is a board of county auditors, and in some other states other county officers, such as the county clerks or recorders, act as county auditors. The term of office is usually either two or four years. The auditor is paid by fees or salary and in some of the larger counties the compensation here also is excessive.[24]

The duties of the auditor are to keep the accounts of the county and to issue warrants against the county treasury for payments authorized by law or by the county board. But the auditor is not usually a comptroller, that is, he ordinarily can discover irregularities in accounts after they have occurred, but does not scrutinize the legality of the daily finance transactions of the other county officers. In order to perform his function properly he should have special technical qualifications and be free from political influence. If he is to act as a check on the expenditures authorized by the county board, he should be independent of that body, and the best method of providing for the office would be by appointment of the state finance authority.

In some states the auditors perform some other duties in addition to their financial duties, such as acting as secretary of the county board. It is clear from what was said in the discussion of the treasurer's office about the misuse of county funds that control of accounting and expenditure of county funds should be lodged in some officer. But it seems equally clear that neither local election nor local appointment will secure the necessary control. If accounting methods are prescribed, as they should be, by the state authorities all that would be needed for the county would be a competent bookkeeper among the employees, the auditing being performed by agents of the central government. This question of the relation

[24] See Fairlie, *op. cit.*, p. 127.

of the state to county officers and county activities runs through the entire problem of local government and will have to be referred to again in connection with the discussion of county activities, the organization and functions of the county subdivisions and of cities, and the relation of these units to each other and to the state.

Clerical Officers of the County

The County Clerks.— In the discussion of the clerks of court mention was made of the fact that in a number of the states this office is combined with that of county clerk, sometimes under the one name, sometimes under the other. The method of selection, qualifications, term of office, and the duties as court officials have already been examined. In some of the Middle Western and Western states there is a county clerk in addition to the clerk of court and this officer is always elected by popular vote, usually for two years.

The duties of the county clerk, independent of his connection with the courts, are very varied in the different states. First of all he is quite frequently charged with the duty of recording deeds and other instruments relating to the transfer of property, the county being almost universally the unit for keeping such records. But in half of the states, as will be seen in the next section, there are special officers for this purpose. Another general function of the county clerk is that of preparing the ballots for elections and of receiving the election returns. He also commonly issues marriage licenses and in some states performs functions commonly entrusted to other officers. In these capacities as in his activities as clerk of court the county clerk obviously acts not as a local officer but as an agent of the state.

He has other functions, however, that are just as

clearly local in their nature. So, he is frequently the secretary of the county board, though as has been seen, that function is sometimes entrusted to another officer. In practically none of his activities does he perform other than ministerial or routine functions, hence he is not in any proper sense a political officer and even as regards his local functions should not be chosen by popular election. Where he acts as the secretary of the county board and keeper of all strictly county records, he could by virtue of ability and experience become the most important officer for purposes of county administration, especially in the absence of any real executive head, much as the county clerk and the town clerk in England constitute the most important administrative officers of those units of local government. For this purpose, however, he should be appointed by the county authority for an indefinite term and hold office during good behavior, instead of being popularly elected for short terms as is now the rule. This departure from the present mode of filling the office would be desirable, however, whether the county clerk is to develop into a virtual administrative advisor to the county board, or whether some other office should be created for the position of administrative head of the county.

The Recorder or Register of Deeds.— Officers for the recording of transfers of real estate were very generally found in the American colonies, although not found in England, where titles were secure and transfers rare. In some of the New England colonies, the recording of titles and transfers was entrusted to town officers, and the same situation exists to-day in three of those states. But in Virginia and the other colonies generally this duty was imposed upon the county either by lodging it with the county clerk or by the creation of a new office

for the registry of deeds. To-day more than half of the states have a special officer for this purpose in all or some of the counties, variously called the recorder or register of deeds. In a third of the states the office exists as a county office by provision of the constitution and wherever found it is filled by popular election for a term varying from two to four years. In the states not having a special county recorder or register of deeds, this duty is usually imposed upon the county clerk or the clerk of court, and in a few instances the recorder acts *ex officio* in other capacities. The recorder is commonly paid by fees charged for the recording of instruments as authorized by law, but in some states, notably where the salary system has been generally introduced for county officers, they receive a fixed salary. No special qualifications are demanded as a rule for this office.

The chief duties of the recorder or register of deeds is in connection with the entering in official records of all transactions affecting the title to real estate, the general rule being that while such entries are not necessary to the validity of a transaction, and do not constitute conclusive evidence of title, they are required as notice to innocent purchasers. Other transactions that are required by the laws of various states to be recorded are frequently entrusted to the county recorder.

In these capacities he acts in the execution of state laws, not in the interests of the county as a local unit. There is, therefore, no justification for his selection by popular election. Furthermore, his duties are of a technical nature, particularly in the matter of making the records, which are open to the public, readily available by proper filing and indexing, and therefore demand special qualifications. This is just another addition to the already long list of county elective offices in which

the voting public as a whole has little interest but which the county political organization finds useful for its purposes. The duties of this office should be performed by an official under state authority and control, so far as they relate to the matter of recording instruments, and those local duties with which he is charged in some states, such as acting as the clerk of the county board, should be entrusted to a truly local officer.

The County Surveyor.— Another office that dates from colonial times is the county surveyor. The office was one of considerable importance in the early history of the states because of the necessity of establishing public boundary lines and the description of private property in an official manner. The office exists as a special county office in the great majority of states to-day, and is established by constitutional provision in more than a third of them. The chief exceptions to the states having this county officer are the New England states, New York, and New Jersey. The office is nearly everywhere elective for a term of from two to four years, the former term being the more common. Special qualifications are not as a rule required for the office. Surveyors are usually paid in fees as their activities are chiefly for the benefit of private persons.

The duties of the county surveyor have been chiefly in connection with the running of lines for the owners of private property, a function that has steadily diminished in importance with the definite establishment of property lines. But in addition to this the surveyor frequently performs some functions for the county, in connection with public roads. He does not, however, occupy the position of county engineer, which is the position of the surveyor in the English county. It would seem that the office in its present condition is of little importance but

that by constituting it as the county engineer's office and requiring the proper qualifications it could be made an important office. Very clearly it should not be filled by popular election but by appointment of the county authority. In a large number of states special county road superintendents or engineers have recently been established, usually to be filled by the county board, and there is no reason for having both offices.

County Education, Health, and Poor-Relief Officers

The list of officers commonly found in counties is not yet complete. A few of these deserve special consideration either because of their importance or because so generally found.

County School Authorities.— In the New England states the county is in no case organized as a school district,[25] but otherwise in every state the county is a district either of direct school administration or of supervision over smaller school districts. The county school authorities fall into two classes, county superintendents of schools and county boards of education. The former officers are found in practically all of the states, and the boards of education or school trustees are nearly as general.

The county superintendent, sometimes appearing under a different name, is chosen in a majority of the states by popular election. But in a number of states he is appointed, either by state authorities or by local boards.[26]

[25] Updyke, "County Government in New England," *Annals of the American Academy of Political and Social Science,* May, 1913, p. 27.

[26] See Harrin, "County Administration of School Affairs, etc.," in *Annals of the American Academy of Political and Social Science* (May, 1913), pp. 153 ff.

The county superintendent, unlike most other county officers, is commonly required to have some special educational qualifications, sometimes to a considerable extent. But even here there are some states that do not impose any such qualifications and the position is open to any one who can secure the necessary votes, on the same basis as for most of the other offices. The position is not generally attractive to politicians, however, because, of the principal county offices it is the most poorly paid and yields the smallest opportunities for making anything on the side. The position is paid by salary and for the most part a ludicrously inadequate one, about the only full-time public offices that pay less being those of the school principals and the teachers. From one thousand dollars to two thousand would seem to be the scale in the larger states, but in a number of states the average falls considerably below the minimum figure mentioned. The term of office is generally the same as for other county officers, two years being the common period.

The duties of the county superintendent vary considerably in the different states, but they may be divided in general into powers of direct administration and of supervision. In a number of the Southern states the county superintendent has direct charge of the school administration in the county. Even in these states, however, as in most of the other states, there are smaller districts within the county, and the county superintendent acts in a supervisory capacity over these. He frequently acts directly as the agent of the state educational authorities in distributing funds in aid of local districts, making inspections and reports, certifying teachers and holding teachers' institutes. In a growing number of states there have been established within recent years supervisors for

the state authorities in addition to the county superintendents. Most cities and towns are special school districts, not under the supervision of the county superintendent, so that his work is chiefly in connection with the rural schools, and even these are sometimes organized into independent school districts. In some cases the county superintendent appoints the county educational board and the educational authorities in the smaller districts.

The position of county school superintendent is unquestionably one of the greatest importance in the system of rural education. But to be really effective it should require high qualifications, be paid one of the highest instead of one of the lowest of the salaries of county officers, and be subject to effective state supervision. Popular election is obviously not the proper way of choosing such officers. Appointment by the county educational authorities would seem to be the logical method for filling this post if the county is recognized as a local educational unit. If, however, his functions are to be wholly supervisory on behalf of the state education authorities, his appointment and salary should both come from that source. If he is to act in both capacities, which is the general rule, his appointment might be local with extensive powers of control by the state and his salary paid partly by the state and partly by the county.

The question has been raised whether the county is really a proper unit for school administration at all and whether it would not be better to create smaller units for direct administration and larger districts for supervisory purposes. But as will be seen in other parts of this work, the multiplication of special districts and special authorities is one of the weaknesses of the system of local government in the United States, as it also has been and still

is in England. Inasmuch as the county is the universal basis of local government in this country it would seem better to retain it as the unit for all purposes of rural local government, including education, smaller areas being subdivisions of the county, and, where necessary, counties being authorized to unite for undertakings that exceed the resources of individual counties. It is, of course, the geographical extent of the typical county rather than the matter of population that makes the problem of county schools difficult, but the movement towards the consolidated rural school is pointing the way towards greater centralization. With the growth of the good roads movement, to be noted later, and the provision of means of transportation, the furnishing of secondary education by county high schools may in a considerable number of counties come to be an important function.

While the superintendent is charged with the educational aspects of school administration, there is usually a county board of education or of school trustees to attend to the business aspects of the work, such as the erection of buildings, the control of the property, the expenditure of funds, and sometimes the appointment of teachers and of the subordinate educational authorities. These boards are in some cases elected by popular vote, in others by state authorities, and in still others by county authorities. In some states the county superintendent himself appoints the county boards. This position is not salaried, though *per diem* or traveling expenses are commonly allowed. It is questionable whether there is any justification for a special authority for this purpose as there is already a county authority with similar general powers to which the management of the business aspects of the county school system should properly be entrusted. Special boards for education are character-

istic of the American system of administration, both state and local, and are found in the cities and county subdivisions as well as in the county. The question of the wisdom of this traditional arrangement and its relation to the general problem of governmental administration will be considered again at a later point.

County Health Authorities.— In a large and growing number of states there are special health authorities in the counties, though this development is comparatively recent. These authorities, like the school authorities, are of two classes, the health board and the medical officer of health. The county health officer or county physician is found in most of the states, especially in the South and the West, but the movement is taking hold in all parts of the Union. The health officers, unlike the rest of the county officials so far discussed, are appointed instead of elected. The appointment is generally vested in the county boards, but in some cases it is made by the local health board. In a considerable number of states the central health authority exercises power of appointment over the county health authorities, and in other instances the Governor or higher courts make the appointments. In some cases the central authorities have also the power of removal, and in a considerable number of states the central health authority may make appointments in case the local board fails to do so.

The law usually prescribes that the county health officer shall be a practicing physician of reputable standing, and although this serves to insure a minimum of medical knowledge, it is doubtful whether restricting the office to practicing physicians is not likely to be productive of more harm than good. The average practicing physician, especially of the caliber usually willing to serve in this capacity, it not likely to be a trained sanitarian and may

be quite unfit for the administrative duties required of the health officer. New Jersey led the way in requiring in 1905 that health officers must pass a state examination to qualify for their positions, and other states are taking steps to follow in that direction.

County health boards are provided in some states, which stand in the same relation to the county health officer that the school boards do to the superintendent. But generally the county boards act as the general health authority and in a few cases they have been given power to adopt quarantine and other sanitary measures. Generally, however, their chief function in this regard is to appoint the health officer who carries out the provisions of the state sanitary laws. There would seem to be no reason for a separate county health board as such powers of local legislation in sanitary matters as are accorded to the county could be performed by the county board. But the question arises again as to the best method of appointing the county health officer. If his function is purely that of carrying into effect state sanitary laws, appointment by state authorities would seem to be the logical manner of selection, state and county sharing in the payment of his salary, since the county is directly benefited. But if the county also enjoys a field of sanitary legislation, the health officer performs local functions as well as state functions and the selection could properly be left in the county board, under conditions imposed by the state as to qualifications and salary. In either event the health officer should be a full-time officer and receive a salary sufficient to attract capable men into this field. At present the salaries paid are such as to attract only unsuccessful or broken-down physicians, or else to necessitate a combination of private practice and public duties which is positively detrimental to effective

service.[27] Combinations of counties into larger health districts where the work in a single county is not sufficient to occupy the full-time health officer is preferable to part-time employment.

Frequently the duties of the county health officer in carrying into effect the provisions of the sanitary code are combined with the local function of caring for the indigent sick and the inmates of county institutions, such services usually being paid by fees. These are, however, in their nature two distinct functions and should not be combined in the same officer. Practicing physicians to take care of this phase of the work can well be employed at part time, where a full-time physician is not needed, and paid on the basis of the services rendered.

In some states in recent years state sanitary inspectors for larger districts than the county have been appointed, analogous in functions to the supervisors of education, and standing in the same relation to the county health officer as that of the supervisors to the county superintendent of schools. Furthermore, as in the case of schools, so with regard to public health, there are in a number of states smaller districts within the county, either coextensive with the subdivisions for general governmental purposes, as in the case of incorporated cities and towns, the New England towns, and in some cases the township, or else special health districts performing only sanitary functions. But the situation is different in the case of public health from that of public education, for while the latter demands schools at convenient locations and, therefore, for geographically small areas, the former demands more and more extensive areas of control as population becomes more settled and intercourse of persons and commodities, particularly foods, becomes

[27] See Hemenway, *American Public Health Protection.*

more extensive. The county, therefore, seems to be a more natural unit for health administration than for educational administration and the growth in importance of the county health officer is to be expected.

Quite recently county public health nurses have begun to be appointed in a number of states, a movement in which the American Red Cross is taking an active interest and furnishing aid. Their work is in aiding the county health officers along special lines and particularly in the dissemination of advice and information in public and private hygiene.

County Poor Officers.— The last class to be considered here of county officers commonly found in the states of the Union are the special officers in charge of poor relief. Poor relief is one of the earliest of the functions entrusted to the county in this country, and while in most states this activity falls under the direct control of the county board, a considerable number of states include among county officers a special superintendent or commissioner, elected in a few cases by popular vote. The duties of this officer in general are to superintend the county poorhouses or poor farms, while outdoor relief is usually extended by direct action of the county board. Although in the care of the poor the county is performing a state function, there is little state aid and as yet but little effective state supervision, though, as will be seen, the tendency is distinctly in the latter direction, combined with direct state administration of certain aspects of charity formerly left to the counties if performed at all. In this field, one of the oldest of the activities of the county in this country, but little progress has been made in the two centuries and more since it was first undertaken, but as will be seen later on, even here there are within recent years encouraging signs of improvement.

Miscellaneous County Officers

It would be tedious as well as unprofitable to attempt an enumeration of all the functionaries that appear here and there as county officers. A mere mention of a few of them will serve to show how varied they are. Elisors, high bailiffs, measurers, jailers, liners, marshals, rangers, road and revenue commissioners, sergeants, wreck masters, and inspectors of various kinds, all figure, with a number of others, in one or more states as county officers. Their chief significance lies in the added light thrown by their existence on the already sufficiently apparent complexity of the county organization, especially in view of the fact that these officers, like those already considered, are generally chosen by popular election, thus still further befuddling the task of the voter and diminishing the coherence of county organization.

County Employees.— In addition to the large number of county officers and their deputies, county government involves the hiring of a number of employees, varying, of course, with the size of the county and the extent and character of its activities, but contributing in many cases very materially to the cost of county government. An illustration of the extensiveness of the payroll in a typical urban county of considerable size, though not in the largest class, may be seen in Milwaukee County, Wisconsin, where according to an investigation made in 1915,[28] there were, in addition to forty-three elected county officials, some six hundred deputies, assistants, and employees, not counting those employed intermittently on the county roads. The salary item alone, in a county budget of two and a half millions amounted to $400,000.

[28] Milwaukee County Government, in *Documents on County Government, op. cit.*

When it is remembered that none of these officers or employees is selected on the merit principle of competitive civil service examinations, it is clear what an opportunity this gives for the operation of the spoils system and how important the control over all these positions becomes to the county machine. Approximately the same situation exists in a relative degree in all counties, for the civil service merit system has been adopted so far in an almost negligible number of counties, when compared to the total number.

Naturally, political considerations govern not only to whom these posts shall go, but also the number of berths that should be provided at public expense for deserving henchmen. An interesting anecdote is told of a certain New Jersey county in which one of the elective officials needed two additional clerks. He asked the county board for four on the supposition that his request would be cut in half, but to his surprise was told by a member of the board, which was of opposite political faith from him, that he needed not four but eight new men. Quick to take the hint the officer passed around eight salaried jobs, four to members of his own party, four to those of the opposite party, when only two were needed.[29] Whether this particular story is historical or symbolical merely, its lesson is forced home by the fact that almost every careful investigation of county personnel has shown that the number of employees is excessive when compared to the work to be done.

The remedy for this situation is clear enough. A scientific county budget based on efficiency and office records would set forth the actual needs of the county in this regard, and the civil service merit system would tend, if

[29] See Paul, "The County Employee," in *Annals of the American Academy of Political and Social Science* (May, 1913), p. 81.

properly administered, to substitute personal fitness for party service as a condition of securing such positions as are properly needed. Progress in this direction in recent years is one of the encouraging signs in the movement for improved county government, but up to the present such improved conditions are so rare as scarcely to destroy the universality of the sad picture of county employment as a dumping ground for incompetents, inefficient in everything but party service. Improvement in this direction is the *sine qua non* of progress in county administrative organization.[30]

Summary of County Organization.— To summarize the characteristics of county organization as set forth in the preceding pages it may be said (1) that the originally plenary powers of the state legislature over the establishment of counties and their organization and activities have been curtailed in a marked degree by the incorporation into the state constitutions of specific and detailed provisions relating to the constitution and organization of these areas of government, leaving in many cases little to be done by the legislature and small opportunity for change, except by the tedious and usually difficult process of constitutional amendment; (2) that county organization, almost without exception, is characterized by a large number of independent administrative officers elected for short terms by popular vote, paid by the fee system, and not requiring any special qualifications for the posts, whatever the nature of their duties; (3) that there is no representative body with general powers of

[30] See also an article by Belcher, "The Merit System and the County Civil Service," in *Annals of the American Academy of Political and Social Science* (May, 1913), pp. 101 ff., and reports on the situation in special states and counties in the collection of *Documents on County Government*, prepared by the National Short Ballot Organization.

local legislation, the county board being chiefly an administrative body without any single executive head; (4) that the officers of the county are principally charged with duties relating to the local administration of state affairs and only secondarily engaged in strictly local functions; (5) that there is almost no adequate control by the state over these officers, and (6) that the appointive positions in the county service are subject to the free operation of the spoils system without any legal limitations in the interests of competency and efficiency.

CHAPTER IV

THE FUNCTIONS OF COUNTY GOVERNMENT[1]

The Legal Nature and Position of the County.[2]—The county in England was not, until the reform legislation at the end of the nineteenth century, recognized as a

[1] There is an unfortunate lack of material available on the activities of American counties in general. Fairlie, *Local Government in Counties, Towns and Villages,* is much less complete in its treatment of the actual activities of the counties than it is in the description of the organization, though the two phases are treated together to a certain extent. Gilbertson, *The County,* devotes several chapters to particular phases of county activity which have been found to be especially poorly managed, and a chapter to recent developments of an encouraging nature in the functions of the county. The volume of the *Annals of the American Academy of Political and Social Science* on "County Government" (May, 1913), contains some papers on special phases of county activity in particular states. The collection of *Documents on County Government,* issued by the National Short Ballot Organization, comprises some investigations, papers, and reports dealing with the matter of county activities as distinguished from county organization, and special monographs describing the activities of particular counties in connection with their governmental organization have been issued by the New York Bureau of Municipal Research and other organizations, general and local.

The chief source of information on the extent of county functions is, however, the volume of the Thirteenth Census entitled *County Revenues, Expenditures, and Public Properties,* issued in 1915. Taken together with the census volumes on *County and Municipal Indebtedness,* and on *Assessed Valuation of Property and Amounts and Rates of Levy,* issued in the same year, this statistical information furnishes the most complete picture available of what the counties really do, so far as the raising of revenues and the distribution of expenditures can furnish such a picture.

[2] See Dillon, *Municipal Corporations,* fifth edition (Boston, 1911).

public corporation, but was regarded purely and simply as an administrative subdivision for the convenient administration of state affairs. In this respect, it will be remembered, the county differed fundamentally from the borough, which latter possessed certain powers at common law by virtue of being a corporation, in addition to such privileges and powers as might be included in the charter granted to it. In the American colonies, in the same way, the county was not a corporation but merely an administrative subdivision of the state. As such it could not hold property, nor sue or be sued in the courts. As a county it had no rights at all. This is the common-law rule in the United States to-day, except so far as modified by constitution or statute.

As early as 1801, however, the county was made capable of receiving and holding land in New York State, and in 1829 counties were made bodies corporate there, with the power to hold property and to sue and be sued.[3] The desirability of conferring these corporate characteristics on counties became apparent in other states also, and to-day in most states by legislation and in at least seven states by constitutional provision counties are created bodies corporate, or bodies politic and corporate.

But although counties have commonly been created public corporations their status in this regard is different from that of incorporated urban units. In the first place counties do not, except in a very few cases so far, possess charters, such as are commonly conferred upon the larger urban units. In California and Maryland within recent years counties have been given power to frame and adopt their own charters, and in some of the cases where cities and counties are coterminous, the charter covers both the city and the county organization, but elsewhere, even

[3] Goodnow, *Comparative Administrative Law*, pp. 172, 173.

for the largest counties, the organization and powers of the county are determined by general or special provisions in the laws and not embodied in the form of a charter.

In the second place, while cities and towns are usually designated as municipal corporations, counties are ordinarily considered as *quasi*-corporations only, to indicate their incomplete powers as compared with cities. This distinction is derived from a number of considerations, chiefly based on the old common-law principle that while municipal corporations are created primarily for the satisfaction of local needs and only incidentally perform general state functions, counties are created for the performance of general and not local functions. But as has been remarked before, this ground for distinction has tended to disappear more and more since counties have been charged with an ever increasing number of general governmental or state functions. Another basis for this distinction to be found in the judicial decisions, is the fact that municipal corporations are created at the request of or at least with the consent of the inhabitants of the area to be incorporated while counties and other quasi-corporations are imposed upon the inhabitants without reference to their wishes. But apart from constitutional limitations the state legislatures are absolutely free to incorporate cities, not only without the consent of the inhabitants concerned but even against their expressed desires, and that has indeed been done, while on the other hand not only constitutional provisions but legislative enactments as well have made provision for securing the approval of a majority of the local electors for the creation of a new county. This basis for the distinction between cities as municipal corporations and counties as quasi-corporations is, therefore, not sound in law nor is it generally true to-day in fact.

But there is a legal distinction between the corporate capacity of the city and the county as regards the property held by each. While it has been held that the private property of a city — that is, property owned by the city but not used for a public purpose — cannot be taken away from it by the legislature, the property of the county, whatever its character, is really the property of the state and may be taken by it for other purposes.

Fourthly, the county as a *quasi*-corporation has no inherent or implied power to borrow money for corporate purposes, or to issue negotiable evidences of debt, whereas some states have held that municipal corporations proper possess an implied power to borrow money for the execution of corporate purposes for which money is required, and that the power to issue negotiable instruments of indebtedness may properly be implied from a grant of power to borrow money. This view with regard to the borrowing powers of cities or municipal corporations is not, however, generally accepted, and the better view seems to hold that in this fact lies one of the important distinctions between public and private corporations, only the latter deriving powers of this nature from the fact of their incorporation.

Fifthly, there is a distinction between the liability to suit in tort of a county as a *quasi*-corporation and a city as a municipal corporation. The almost universal rule with regard to counties is, that although their corporate character makes them liable to suit in contract or *quasi*-contract on the same basis as private corporations, there is no liability in tort for the wrongful acts or omissions of county officers which cause injury to others, unless such a liability is imposed by statutory provisions. Municipal corporations proper, on the other hand, are by the general rule subject to liability as corporations for torts

committed by their officers in the performance of corporate as distinguished from governmental functions.[4] This distinction, logically founded on the original difference between counties as performing no local corporate but only general state functions, and cities as existing primarily for local corporate purposes, has been continued in spite of the development of local corporate powers of counties, so that to-day a county will not be held liable in damages, when a city in exactly the same case would be held liable. By statute a number of states have imposed a liability on counties for the proper maintenance of county roads and property, the protection of persons and property against violence, or even a general liability similar to that of municipal corporations proper. The constitution of South Carolina, for instance, expressly imposes a liability of not less than $2,000 on a county where a lynching takes place, without regard to the conduct of officers, while four other state constitutions expressly exempt the county from liability for acts of the sheriff.

Finally, it may be noted that in some states by constitution and in others by statute, these common-law distinctions between counties and cities have been done away with by the indiscriminate application of the term "municipal corporations" to both classes of governmental units.

Aside from the powers arising from the corporate character of the county only such powers may be exercised as are expressly conferred by constitution or by statute. The legislature in the absence of constitutional restrictions may not only, as has been noted, create, alter, and abolish counties, as well as determine their form of gov-

[4] For a discussion of the liabilities in suit of municipal corporations proper, see below, pp. 365 ff.

ernmental organization, but may also fix the measure of their powers and responsibilities, subject always to such limitations as may have been inserted into the constitutions. What these limitations with regard to the organization of county government are has been indicated in the preceding chapter. We will now consider briefly the chief constitutional restrictions affecting the freedom of the state legislatures in dealing with the governmental powers to be exercised by the county or by county officers.

Before considering the restrictions found in the state constitutions, however, it will be necessary to note that there are some prohibitive provisions in the Constitution of the United States which limit the freedom of state legislatures in conferring powers on counties and county officers. As regards the organization of county government there are virtually only the provisions of the Fifteenth and Nineteenth Amendments, referring to the denial of the right to vote because of race or sex. But as regards the powers to be conferred on counties and their officers the limitations of the Federal Constitution assume a much more important rôle, since everything which the states are prohibited from doing is also put beyond the power of their delegation to subordinate agencies.

It is not possible within the range of a brief treatise on local government to enter in detail into a discussion of these prohibitions and their application by the courts. It is sufficient merely to point out that the most important of these, namely the provision of the Fourteenth Amendment prohibiting states from depriving any person of life, liberty, or property without due process of law applies to the exercise of powers by counties or county officers especially in the exercise of judicial functions, legislative functions, and the taxing powers.

Similarly, the provisions of state constitutions safe-

guarding individual life, liberty, and property, limit the state legislatures not only as regards direct action by them but also in the powers they may confer on subordinate agencies of government. But these limitations, like those of the Federal Constitution, are intended to safeguard private rights in general against governmental invasion. It was soon found, however, that the local units of government themselves, and the people who constituted them, were in need of protection against undue and improper interference by the legislatures. This led, as has been seen, to the insertion into many of the constitutions after the first half of the nineteenth century of detailed provisions and express prohibitions concerning the organization and powers of local government. The most important of these so far as the powers of counties are concerned are to be found in the prohibitions against special or local legislation regulating the affairs of counties. Such a general prohibition is to be found in over a third of the state constitutions, while special restrictions on particular aspects of county functions are to be found in the majority of constitutions.

One reason for the very general insertion of such provisions lay in the tendency of legislatures to make special provisions for particular counties when such provisions were useful to the party in power in the legislature or to the political organization in control of the county. In providing jobs for deserving politicians, in making contracts for public works or supplies, in granting franchises or licenses, a particular county might be too limited under the general laws or too slow in using the power it possessed to suit the forces with influence in the legislature. Hence new powers might have to be granted or direct obligations imposed by law on a particular county, with no reference to local needs or desires. One way to put

a stop to such practices which left each individual county at the mercy of the legislature was thought to be the insertion of a requirement in the constitution that county affairs should not be regulated by special law but that all counties or none must be affected, thus enabling the combined opposition of all county electors to defeat undesirable proposals in the legislature.

It is a curious paradox in this situation, as in the identical situation that arose with regard to cities, that these measures by going too far did not go far enough. In view of the enormous differences in counties already noted as regards geographical area, density and character of population, and resources, even within the bounds of a single state, absolute uniformity of treatment would be as undesirable as would be injudicious variations. Consequently the courts in applying this constitutional limitation have been inclined to permit the classification of counties and the passing of special laws for all counties in a particular class. Under this view, therefore, counties may be divided into classes according to population for the purpose of assessing property for taxation, or for the purpose of regulating the compensation of officers, and in other matters where population furnishes a reasonable basis for discrimination.[5] But under cover of this modification some state legislatures have simply nullified the constitutional prohibitions in this regard by adopting a classification of counties according to population which places each county in a class by itself, and then legislating specifically for each county without naming the county but referring merely to its class.[6]

The specific constitutional limitations imposed upon

[5] Dillon, *op. cit.*, Vol. I, Sec. 170.

[6] See with regard to California, Illinois, and New Jersey, Gilbertson, *The County*, pp. 115, 116.

state legislatures with regard to the nature and extent of county functions can more conveniently be noted in connection with the discussion of the various activities concerned.

County Functions in General.— Originally, as has been seen, counties in the American colonies were established almost purely as judicial, election, and militia districts. Later they became districts for highways, poor relief, education, sanitation, taxation, public works, recreation, and miscellaneous functions, varying in extent in different states and at different times. But until counties became local corporations, the law recognized no distinction between state functions performed by the county and local functions performed by it, and even to-day there is only a very limited recognition of the possession by the county of a sphere of local action. Viewed from the angle of the source of authority, the powers of the county are, of course, primarily state powers. Viewed from the angle of the kind of officers who exercise the powers, they are local powers, though in contemplation of law county officers, even though not popularly elected and not subject to state administrative control, are state not local officers. Examined from the point of view of whether the powers are primarily of concern to the state as a whole or chiefly affect the welfare of the inhabitants of the county, the activities of the county include both classes of functions. It is obviously impossible to make a hard and fast classification under this last head since opinions will necessarily differ as to the relative interests of the state and the locality in the exercise of particular functions. If, however, we adopt as a basis of determination the powers which have been conferred upon cities, regarded as agencies primarily for the satisfaction of local needs, we find that many of the functions now performed by coun-

ties should be considered as local rather than state activities.

The administration of justice, the conduct of state elections, the assessment and collection of state taxes, the recording of deeds, the probating of wills, the organization of the militia, seem clearly to be functions that are primarily of state-wide rather than local concern. The conduct of local elections, the protection of life and property, the preservation of public health, the relief of the poor, the provision of public education, the care of the highways, the construction of public works, and the administration of local taxation seem equally clearly matters in which the people of the county have an interest, equal if not paramount to those of the state as a whole. These latter functions may be regarded, therefore, as the local functions of the county, however they may be controlled or by whom exercised. And yet these too are still generally viewed as state functions.

Some conception of the extent of these various functions performed by American counties may be obtained from the United States Census returns on county revenues and expenditures in 1913, the last year for which complete statistics are available. In that year the total governmental cost payments of counties, which include expenses, interest, and outlays, amounted to $385,181,760, or $4.49 *per capita*. The statistics show enormous variations both in the total governmental cost payments by counties grouped by states and in the *per capita* figures on the same basis. The total payments varied from $45,000 for Vermont to $46,000,000 for California, while the *per capita* payments varied from 13 cents in the former state to $20.67 in the latter. Rhode Island was the only state in which there were no county payments whatever, as in that state alone the county is

not recognized as an independent fiscal unit, the county expenses being included in the state budget.

Viewed as geographical groups it is seen that the Pacific states, California, Oregon, and Washington rank first in *per capita* expenditure with $15.45, the Mountain states second with $9.47, and the New England states last with $1.06. The Southern states show a *per capita* average expenditure of $3.69 while the only group of states other than the two first mentioned, which exceed the *per capita* for the country as a whole, are the seven states of the West North Central group [7] with a *per capita* expenditure of of $5.19.

These figures are affected by two varying factors which must be kept in mind in instituting comparisons as to county government based on statistics of governmental cost payments. One factor is the extent of functions performed in certain of the states by the subdivisions of the county such as townships, towns, school districts, road districts, and other minor units. The other is the extent to which the county enters upon the functions which are by law intrusted to it. It will be necessary to revert to this two-fold phase of the matter in considering the statistics of expenditures under the different classes of functions. The largest *per capita* for a single county in 1913 was $53.75 in St. Lucie County in Florida, with Glenn County, California, second with a *per capita* of $51.04.

Of the total governmental cost payments by American counties in 1913 more than 72 per cent was applied to the expenses of the general departments, 4½ per cent was paid out in interest on indebtedness and over 23 per cent was spent for permanent improvements.

[7] Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

The revenue receipts for the same year amounted to $370,043,946, the *per capita* being $4.32 and the relative position of the states and group of states being very largely the same when considered from this point of view as in the case of governmental cost payments considered above.

In addition to the governmental cost payments mentioned above, the counties in 1913 paid out $58,965,207 for the redemption of debt obligations, and the receipts from the issue of debt obligations for the same year amounted to $86,051,348.

Functions of State Administration

Judicial Administration.— The American county is above all a district for the administration of justice. Leaving out of consideration the justice courts, which ordinarily have a jurisdiction coextensive with the county in which they are located, there are in a large number of states, as has been seen, special courts for each county and in those states in which there is no regular system of county courts, the district, circuit, or superior courts regularly hold sessions in each county. These courts are usually courts of record and courts of general civil and criminal jurisdiction, though the jurisdiction of the county courts proper is usually limited where there are higher courts provided between them and the supreme court of the state. The officers of these courts, as has been seen, are generally county officers, in that they are elected by or appointed for the county, though the presiding judges and prosecuting attorneys are sometimes chosen from a larger district.

In criminal cases tried in the courts in the county almost every stage of the proceedings is identified with the county. The arrest of the offender is the business

of the sheriff or his deputies, though local police officials in the cities, and marshals or constables in the small towns and rural districts may arrest, and justices of the peace and judges of the police courts may issue warrants for arrest and commit for trial by the higher court for offenses not triable in the lowest courts. If the accused does not give bail to appear, he is imprisoned in the county jail. If an indictment is required, the sheriff usually summons the grand jury, consisting of not more than twenty-four inhabitants of the county, the judge of the trial court charges the jury with the business before it, and the prosecuting attorney for the county presents the case. If an information is brought, it is the prosecuting attorney for the county who draws that up. When the case comes to trial, the trial or petty jury is selected from inhabitants of the county in which the offense was committed, and when a verdict of guilty is returned, and the judgment imposes a sentence of imprisonment, the prisoner is sentenced to the county jail, except for the more serious offenses, when he is usually imprisoned in the state penitentiary. The expenses of the proceeding are borne by the county, including the salaries of the court officers, and the maintenance of courthouses and jails, and when fines are imposed they ordinarily inure to the benefit of the county. It appears, therefore, in many respects to be a county proceeding.

But as has already been pointed out, the offenses which are tried in the courts held in the counties are offenses against the laws of the state, not against local laws, and all the proceedings are regulated by state law and are subject to review by the higher courts of the state in the interests of the accused. It is only in the direction of protecting the offender that the county plays a determining part. If the sheriff fails to arrest,

if the prosecuting officer fails to present evidence for an indictment or to institute proceedings on information, if the grand jury fails to return a true bill, if the prosecuting attorney fails to conduct the case effectively, if the judge directs a verdict of not guilty, if the petty jury fails to render a unanimous verdict of guilty, or if the judge imposes too light a sentence, the state law may virtually be nullified. As has been seen, local or political considerations can creep in at almost every stage of the proceedings to defeat the proper administration of the criminal law as instituted by the state for its own preservation. If, however, all of these local agencies function separately and in combination to the extent of arresting, convicting, and sentencing an offender, the appellate courts of the state may still set it all aside on a multitude of technical grounds. Should the action of the local courts be sustained by the higher courts, there is still the possibility of it all being brought to naught by the exercise of the pardoning power on the part of the executive branch of the state government. In a positive sense, therefore, the interest of the county in the preservation of law and order within its confines is protected by a partial and incomplete power, while in a negative way the action of the various county factors involved in the administration of criminal law may be final in the failure to enforce the laws in which the state has a paramount interest.

In the conduct of civil cases also, local factors play a part, though to a much more limited extent than in the case of criminal cases. The institution of the suit is left to private individuals, the attorneys for both parties may be residents of other counties, and the costs, aside from the regular expense of the judicial machinery, are not borne by the public. The jury, however, when employed,

is locally summoned and consists of inhabitants of the county, the judge and court officers are county officers, and the judgment is enforced by county officials. But there is ordinarily no conflict of interests as between the county and the state at large in the determination of the suit. This phase of judicial administration is not, therefore, one in which the county as such has any peculiar interest.

Probate administration or the settlement of estates of decedents is a branch of judicial administration which has very generally been centered in the county as a jurisdictional unit, entrusted either to the regular county courts or to special probate courts under varying names. In some states, notably in New England, probate administration is exercised in districts smaller than the county, while in others several counties may be united into probate districts, but in any case it is evident that the county as such has no special interests involved, as the laws with regard to the administration of estates are state-wide laws and the action of the probate court affects all the property of the decedent, both personal and real, wherever situated within the state, and as regards his personal property wherever it may be, even outside the state. There is, therefore, no reason for the local selection of the officers of the probate court, nor for their salaries being made a charge upon the county.

The County Jail.— Perhaps no phase of county administration is as uniformly unsatisfactory or as generally criticized as is that of the county jail, an important instrument in the administration of the criminal law. Jails must be provided by counties by statutory provision in practically all the states, and in the great majority of them the sheriff is the responsible officer. We have already discussed the manner of selection and the term of

office of the sheriff, and no argument is needed to show that he is neither by training nor inclination a penologist. His income is frequently affected by the number of prisoners in the jail as he is usually allowed a certain sum for the feeding of each prisoner. The difference between the sum allowed him and the amount he spends on the prisoners goes into his own pocket, with consequences that can easily be imagined.[8]

Wherever investigations of county jails have been made they have been found to be, almost uniformly, bad. The quarters are crowded, uncomfortable, dirty, and frequently indecent. There is seldom any provision for exercise or opportunity for employment. Men and women, old and young, sick and insane, confirmed criminals, first offenders, and even those merely under arrest awaiting action by the grand jury are frequently herded in together.[9] Though the laws may prescribe decent conditions in many of these respects, indifference, lack of funds, or political considerations generally operate to nullify such provisions when they exist, and one of the most eminent authorities on prison reform declares that in his opinion these abuses are inseparable from the system of county jails.[10] Direct state administration of this element in the administration of criminal justice would seem to be dictated by experience as well as by theory.

County Functions in State Elections.—Another very general activity of the county in which it acts as the direct agent of the state is that in connection with the conduct of state elections. In Virginia, as has been seen, one

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[8] Gilbertson, *op. cit.*, p. 90.

[9] Fairlie, "County and Town Government in Illinois," *Annals of the American Academy of Political and Social Science*, p. 70. Also Gilbertson, *op. cit.*, pp. 90–91.

[10] O. F. Lewis, "County Prisons," *Proceedings of the Third Conference for the Study and Reform of County Government*, pp. 1–11.

of the earliest attributes of the county was its character as an election district for members of the colonial assembly, and in all of the states except the New England group this feature of county government was continued. But in addition to constituting an election district for state senators and representatives, either by itself or together with other counties, and also being grouped with other counties in congressional districts, the county has almost universally been made the district for the administration of the nominating and electing procedure in connection with the election of state officers. The preparation of polling places, the provisions of judges and other poll officials, and the canvassing of the returns and their certification to the state authorities is almost everywhere entrusted to the county authorities.

Corresponding to its importance as a general election unit, combined with the large number of officers elected by and for the county, is the place of the county in the organization of the political parties. In almost all of the states with the exception of New England, the county convention and the county committee constitute the most important cogs in the state political party machine. Whether state officers are nominated by state conventions, the members of which are selected by the county conventions, or whether one of the various forms of nomination by primary elections is employed, the county party organization plays a fundamental rôle. In its activities it presents a two-fold aspect, however. Not merely does it function as an integral part of the machinery for state campaigns, but incidentally it controls also the filling of the strictly county offices, since those positions and the contracts and jobs they control, as well as the important relation between the judicial and police officials in the county and the activities of the politicians which was

touched upon in the preceding chapter, furnish important weapons of offense and defense in the conduct of politics.[11]

The importance of the county as a cog in the political party machinery can hardly be overemphasized in any study of the county which attempts not merely to point out weaknesses in the system but also to examine the causes of its inefficiency and the reasons why remedies have not been applied more generally. The corruption of politics in the large cities of the country has been exposed again and again and more or less successful assaults upon the factors which make such conditions possible, have, as will be seen, been made. But little progress has been made in the direction even of publicity on similar conditions prevailing in our counties. Yet the most notorious political organization in the United States which has played an important, if not honorable, rôle in the entire field of party politics, local, state, and national, is Tammany Hall, which is the Democratic party machine of New York County. Reproductions in miniature of this county organization are to be found throughout the length and breadth of the land, but the stakes being smaller and the public interest much less aroused, they have been permitted to carry on their work with but little effective criticism. Until the same sort of attention is directed to this phase of the county problem that has been more and more concentrated upon municipal and state politics, the ground will not even have been cleared for the inauguration of constructive measures of improvement.

Assessment and Collection of State Taxes.— A third function which the county generally performs for the state is the valuation of property for taxation. The general property tax is by far the most important source

[11] See, Gilbertson, *op. cit.*, Chap. vi.

of state revenues, and the listing of this property and placing upon it a value for purposes of taxation is in the great majority of states entrusted very largely to county officials. Until recently this function was performed for the state largely without any adequate state supervision, with the unfortunate results noted in the previous chapter. If the county is to be the unit for the assessment of property for purposes of state taxation it must be subjected to strict control in the interests of efficiency and impartiality and the state should bear its proportionate share of the expense of such assessment, for scientific assessment of property requires the expenditure of sufficient funds to provide expert assessors and the instruments with which they must work.

The taxes collected for the state by the county are turned over to the state treasury at regular intervals by the county officials, and in this respect also, of course, the state must possess the means of careful control and compulsion. This is obviously an activity in which the inhabitants of the county as such have no immediate interest and in which the service to the state should be paid for by it and not by the county.

Military Administration.— In some of the colonies, notably Virginia, one of the earliest functions of the county was to act as the principal unit for the organization of the militia, each shire being under the direction of a lieutenant as commander, corresponding very closely to the Lord Lieutenant in England. Even in New England, where the town appeared as the primary militia unit, the county became the regimental unit at an early date. Throughout the colonial period this aspect of the county constituted one of its most important activities. The election of the sergeant major, the actual commanding officer of the regiment, by the freemen of the shire

in Massachusetts as early as 1643 presented probably the first instance of an officer of the county elected by popular vote. The relative importance of the county as a militia unit declined, of course, with the establishment of a Federal army, and by later legislation other divisions than the county, such for instance as the congressional districts in Mississippi, came to be used as the unit. In fact, counties came to be less and less suitable for this purpose. But in a considerable number of states to-day the county is still the recognized unit for the organization of the state militia.

This function is obviously a state, not a local, function for while the militia may be called out to preserve order in the county on request of the sheriff, or by action of the governor without such request, it is not available except in emergencies and even then it has not in general shown itself to be a very satisfactory instrument for dealing with serious disorders. It can hardly be viewed, therefore, in the light of a branch of the local police force, for which function it is entirely too cumbersome.[12]

The Recording of Deeds and Other Instruments.— The county, as has been seen, was at an early date in the history of colonial administration designated as a convenient unit for the recording of deeds. But this is a function performed for the state as a whole and under requirements minutely prescribed by state law. Under the Torrens system adopted in a number of our states, the act of recording deeds in the prescribed manner actually establishes a title instead of merely presumptive evidence of title which simplifies the determination of ownership of land. So far as the expense of the system of registration of land titles and other documents required by law to be recorded is not paid by the owners of the land

[12] See Holcombe, *State Government in the United States*, p. 288.

or instruments, it is properly a charge upon the state treasury and not upon the county.

It is not possible to discover from the Census statistics of governmental cost payments of counties just what amounts were spent in the year 1913 for each of the activities considered above under the head of activities of state administration. Nor is it possible to derive the total expenses falling under that general head, as the classification of the Census reports does not correspond completely with that adopted here. But adopting the figures given in the Census reports under the headings of "General Government" and "Protection to Persons and Property" as comprising roughly the functions considered here under the designation of functions of state administration, it appears that of the $277,735,319 representing the total of expenses of general departments, $117,548,193, or a little over 42 per cent, were spent for these general state purposes. This does not include, however, the outlays or payments for land or other property and public improvements, more or less permanent in character, in connection with these functions, nor the proportion of interest charges properly assigned to them, as only the total outlays and interest payments are given in the Census figures. It is possible, however, by comparing the value of public properties reported in the same year under the heads of courthouses and jails with the total value of lands, buildings, and equipment of general departments, to obtain an approximation of the relative amount expended in interest and outlays for these functions of state administration. Of the total value of lands, buildings, and equipment of counties reported for that year, namely, $576,656,715, the value of the lands, buildings, and equipment of courthouses and jails

amounted to $349,717,387, or a little more than 60.5 per cent. Adopting this ratio as a rough basis for estimating the proportion of the $89,839, 725 reported as total outlays for the year 1913, the outlays for jails and court houses would equal about $54,488,868, and the yearly interest charges for indebtedness incurred for these purposes would amount to 60.5 per cent of $17,417,593 or $10,381,152.

The total expenditures, then, in one year, for the functions of state government performed by counties would appear to approximate the considerable total of nearly $182,500,000. As this money comes chiefly out of the pockets of the county taxpayers, as will appear in the discussion of county finances, it is apparent that the county is heavily burdened in the performance of functions in which it has no peculiar interest and from which it derives no special benefit. The general inefficiency of county administration and the lack of adequate control from the point of view of honesty, capability, and economy, make it certain that the expenditures for these purposes under the system of county control are greater than they would be for the same purposes if directed and controlled by an efficient centralized administration.

Functions of Local Administration

As distinguished from the foregoing functions performed by the county which are primarily activities of state administration, there remain those functions in which the inhabitants of the county have a relatively greater direct interest and which, therefore, may be termed local functions by contrast, even though they are of greater or less concern to the state as a whole, for it has already been seen that no conceivable activity of local government could be quite without interest to the people

of the state as a whole. These more strictly local functions will be classified for the sake of convenience under the heads employed by the Census reports for financial statistics as follows: Education; Highways; Charities, Hospitals, and Corrections; Conservation of Health and Sanitation; Recreation; Expenses of Public-Service Enterprises; and Miscellaneous Departments.

The total governmental expenses in the year 1913 for these local activities amounted to more than $160,000,000. or nearly 58 per cent of the total governmental expenses. This assumes that the sum of $5,574,800 assigned to the heading of Miscellaneous and General Expenses was chiefly expended for these local functions rather than for the state functions considered in the preceding section. This assumption, however, can neither be proved nor disproved because this heading in the Census reports comprises returns that could not be classified under the other heads and to a certain extent at least includes items that should properly have been included under one of the two main heads grouped herein under state functions. But as the sum involved represents less than four per cent of the totals as herein given for expenses of local county functions, the margin of error is sufficiently small to be ignored for the purposes of general comparison had in mind in this presentation.

Adopting the same basis for estimating the proportion of government cost payments in the year 1913 that went into interest and outlays for the local functions of county government, which was used in totaling the cost of the state functions, it would seem that the sum of $42,323,703 was spent under these items, making a total expenditure for local purposes of about $202,700,000 as compared with a total expenditure of about $182,500,000 for state

purposes. In other words, of the total governmental cost payments made by counties in the year 1913 only about 53 per cent was spent for purposes in which the people of the county may be considered as having a special interest. Of the total buildings, lands, and equipment belonging to counties and paid for by them, amounting to some $577,656,785 in 1913, less than 40 per cent in value were devoted to these local purposes.

Education.— Measured by the total expenditures by counties, the most important county function included under the head of these local functions we are now considering is education. In the year 1913 the total county expenses of school administration were reported at $57,682,193 making a *per capita* expenditure for this purpose of $0.67. But these figures are likely to be misleading because of the enormous variations in the county expenses for schools in the different sections of the country, in the various states within a given section, and even in the different counties of a single state. In the first place it is to be noted that in none of the six New England states is there any county expenditure whatever for school purposes, the local contributions to public education being made by the towns or districts within the towns. Viewed by groups of states the *per capita* county expenses for schools varied from $0.02 in the Middle Atlantic group to $5.26 in the Pacific group, while the variations among individual states ranged from $0.01 *per capita* in New Jersey, Virginia, and Texas, to $8.07 in California. West Virginia and Delaware, like the New England states, showed no county expenditures for school purposes.

To the expenses of school administration must be added a portion of the interest payments and of the outlays for

buildings, lands, and equipment for schools. The Census statistics do not itemize these returns for the various departments but some conception of the proportion of interest and outlays chargeable to schools may be gained from the fact that the value of the lands, buildings, and equipment of county schools and libraries [13] reported in 1913 was $96,568,847 out of a total value of county public properties of $576,656,715. But less than a third of the states reported any county property under the head of schools and libraries and these were with two exceptions all in the Southern, Mountain, and Pacific states. California alone reported over half of the total values of properties under this head.

The expenses of school administration figured as an important part of the total governmental cost payments of counties only in the Southern and Western states, and in those states the school expenses were wholly lacking in West Virginia, were negligible in Virginia and Texas, and almost so in Arkansas. In the other states of these sections, however, this function of county government assumes a relatively important rôle.

Of course the amount expended by counties for schools is not a criterion of the efficiency of local rural school administration, for in the Southern states, where this item figures prominently, the rural school situation is by no means the most satisfactory. These figures may indicate merely that the county plays a relatively more important part in the school system than in the Northern and Eastern states where the townships and school districts are the primary units of school administration. But the trend of expert opinion seems to be distinctly in the direction of favoring the substitution of unified county administration

[13] The value of libraries though not segregated is small. See below, p. 214.

of schools for the complex and unsatisfactory district system now general in the Northern and Eastern states.[14]

Public-school administration began in this country in colonial times as a wholly local undertaking. As early as 1647 the Massachusetts towns were required by law to establish elementary schools, and the New England towns or districts within the towns became the general units of school administration. In the central states and those adopting the county-township system of local government the primary units of school administration corresponded in general to the townships or subdivisions of the townships. In fact, as has been seen, the Federal Government in setting aside lands for public school purposes in the territories and in insisting on a similar provision by the states upon applying for admission to statehood, designated a section or sections of land to be dedicated to public-school purposes, sometimes stating expressly that it should be for the benefit of the people of the township. In the Southern states, on the other hand, where provision for free public schools came much later than in the Northern states, the county was the only suitable existing unit for school administration. Owing to the sparseness of population, however, and the large area of counties, special districts were created within the counties for school purposes, and incorporated towns and cities were commonly constituted special districts, usually exempt from the jurisdiction of the county authorities. With the increased density of population and improved transit facilities, however, the county appears to be coming into more and more favor as the primary educational unit, elementary schools being established at convenient places and secondary schools being provided for the

[14] See Cubberley and Elliott, *State and County School Administration* (New York, 1915), Vol. II, Chap. ix.

county as a whole. In some instances the entire school administration is in the hands of county authorities, including even the direction of the educational system in cities within the county.[15]

While some progress is being made in the direction of centralizing local school administration in larger districts than the towns, townships, or rural districts, there has also been a steady and marked trend toward control over local school administration by state authorities. Early in the nineteenth century states began to establish central educational authorities, and at the time of the Civil War all the Northern states had provided central educational authorities of various kinds and with varying powers. The movement spread after the Civil War and now comprises all the states of the Union.

In the method of their constitution, in their general powers, and in their relation to the local school authorities, these different state authorities show the greatest variations. But a few characteristics of various types may be noted, especially with regard to their relation to the local authorities.[16] State Superintendents of Public Instruction, under this or a similar title, exist in every state in the Union. In thirty-three states the superintendent is popularly elected, by a constitutional requirement in most of the states; in nine states he is appointed by the Governor; in six states he is appointed by a state board; and in one case, Vermont, he is chosen by the legislature. Forty states have also a State Board of Education. This board in a number of cases consists wholly or largely of

[15] See Cubberly and Elliott, *ibid.*, II, pp. 246–249.

[16] See Cubberly and Elliott, *ibid.*, Vol. II, Chap. xi; Young, *The New American Government and Its Work* (New York, 1916), pp. 400, 401; Fairlie, *Local Government in Counties, Towns, and Villages*, Chap. xii; Holcombe, *State Government in the United States* (New York, 1916), pp. 289–292.

ex officio members, in other cases it is a specially constituted authority filled by appointment of the governor, or by the legislature, or even by popular election, with the Superintendent of Public Instruction as a member.

The relative powers and duties of the salaried executive officers and the unsalaried boards vary greatly from state to state and it is not possible to discuss those variations here. But the powers of the state authorities, however distributed, in their relation to the county authorities may be briefly noted. In a few states the central authorities are still very limited in the measure of control they exercise over the local authorities, but in most states they exercise control in one or more of the following ways:

1. General supervision over public schools.
2. The distribution of state school funds to the localities.
3. The examination and certification of teachers.
4. The complete or partial determination of the curriculum.
5. The prescribing of textbooks for the different subjects.

The power of the central authorities to insist on minimum requirements in the public schools of the localities affects the rural school system much more vitally than the city schools, the latter usually adopting by local action standards higher than those set by the state. One of the most significant of the instruments wielded to this end by the state authorities is the power to make the allowance of state grants to local schools dependent upon the meeting of certain requirements as to length of the term, the equipment, and teaching force of the local schools. This is an adaptation of the English grant-in-aid system, which, as has been seen, plays an important rôle in central control over local administration in England. It com-

bines the advantages of central supervision and control in the interest of minimum standards and uniformity with the absence of local resentment at state interference. Most of the states use this method to a greater or less extent and in some cases the state aid amounts to as much as a third of the whole local expense. By granting relatively larger amounts to the poorer rural areas the state can make possible an adequate school system throughout its entire area while at the same time stimulating local interest and endeavor.

County school administration, therefore, presents a clear example of a function in which the inhabitants of the local government area have a primary interest, but in which the interests of the state as a whole in the improvement of educational opportunities for all its citizens can be preserved by means of financial assistance corresponding to its larger interest and varying inversely with the resources of the locality, without destroying local initiative or restricting it unwisely.

Libraries.—In the Census reports of county expenditures, the administration of county libraries is grouped with that of the schools under the head of education. County libraries are a rather recent development, the first county library being established in 1901 in Ohio in consequence of a legacy left by a private citizen. Only eleven states in 1913 reported expenditures for county library administration,[17] but the movement is spreading rapidly and other states have passed laws authorizing counties to establish libraries.[18] The need of county li-

[17] New York, Ohio, Michigan, Wisconsin, Minnesota, Nebraska, Maryland, Kentucky, Wyoming, Oregon, and California.

[18] See, Walter A. Dyer, "Putting Character into the Counties," in *World's Work*, September, 1915, reprinted by the National Short Ballot Organization in their collection of *Documents on County Government*.

braries is indisputable in view of the fact that in two-thirds of the counties of the whole country there is no public library of any kind with as many as five thousand volumes, and in those counties where city libraries exist the rural county dwellers have free use of them in only about a hundred counties.[19]

In the development of county libraries California leads, as it does in various other aspects of county progress, with the largest number of county libraries, although Ohio reported the largest expenditures for this purpose in 1913. The successful experience of Van Wert County, Ohio, the pioneer in the county-library movement, which not only developed a good library at the county seat but made it available to people in every part of the county by means of branch stations, points the way for supplementing the county educational work for school children by providing educational opportunities for children out of school and for adults, by means of free library facilities.

A large number of states have created public library commissions to encourage and aid cities and towns to establish public libraries, but with limited or no powers of control. Until the past decade, however, almost nothing was done to make libraries available to the rural population. The county would seem to be the logical unit for the administration of library facilities for the rural portions of the population, just as it is the logical unit for rural school administration. In fact the economy resulting from having a central county library with branches and circulation facilities, instead of attempting to establish a separate library for each rural village or hamlet is obvious.

[19] Statement of Dr. Claxton, United States Commissioner of Education, quoted in the article cited above, "Putting Character into the the Counties."

Public libraries are primarily educational institutions. As such they should be made to fit into the general educational scheme and should be conducted as part thereof. In the counties, as in the cities, therefore, the administration of public libraries should be entrusted to the general educational authorities instead of creating separate bodies for this purpose. The immediate direction of the library facilities, of course, must be put into the hands of trained librarians, if the greatest results are to be obtained. But the expenses of public libraries should form part of the educational budget of the unit which they serve, and their correlation with the other public educational activities should be insured by placing them under the educational administration. In the same way, the aid granted and supervision exercised by the state over this branch of the educational activities should be lodged in the hands of the state educational authorities, not entrusted, as it now generally is, to independent boards or bureaus.

One other matter needs to be emphasized in connection with public libraries, particularly with county libraries or those intended to serve the rural population. Because of the size of counties and the scattered nature of their rural population, an expensive central public-library building with reading-room facilities is a useless extravagance that can serve only a small portion of the rural population and that requires money badly needed for real service. The major part of the money expended for rural library facilities should go into books, efficient direction, and circulation facilities. Branches should be established in all rural schools, which are supposed to be sufficiently numerous and properly located to be within convenient reach of every home in the county. Here reading-room facilities could be provided without appreciable additional expense, available at the times when the building is not

being used for instruction purposes, and from this point books could be conveniently withdrawn for home use. This additional use of existing or necessary school buildings presents one important phase of the general problem of the larger use of the school plant, another aspect of which brings up the consideration of the school as a social center. The latter proposal will be considered briefly in discussing the functions of the county under the head of recreation.

Highways.— Next to education, the local county function which showed the greatest expenditures in 1913 was that of road and bridge construction. The total county expenses for highways in 1913 was $55,514,891. This, it must be remembered included only the cost of grading, repairs, and other operating expenses, for expenditures for permanent highways were listed under the head of outlays. One of the significant features of highway administration by counties lies, however, in the very fact that such enormous amounts are expended for temporary improvements and repairs required each year because of the failure to build permanent roads.

The care of roads and bridges was one of the earliest duties of a local nature imposed upon counties, though in the early history of this country the building of highways was commonly undertaken by private capital operating under turn-pike franchises and reimbursing itself out of tolls. Expenses for highways, like expenditures for education, show the greatest variations in the various states and sections of the Union. Every state except Rhode Island, it is true, reported some county expenditures for highways in 1913, but the *per capita* expenditures varied from less than half a cent in New Hampshire and Vermont to $2.22 in California. The New England group of states in which road building is largely a func-

tion of the towns with state aid, showed a *per capita* county expenditure of only $0.07 for this purpose, while the three Pacific states reported an average expenditure of $2.09. In the most important groups of states, from the point of view of size,[20] and in the West South Central states, the expenses for highway administration constituted the largest item for expense for local county purposes, and in two other groups of states [21] this item amounted to more than the expenditures for general government.

In spite of the early entry of the county into the field of highway and bridge administration, of the almost universal participation by the county in this activity, and of its tremendous expense, it represents one of the least successful of county undertakings. By its very nature it is a kind of activity in which ignorance, wastefulness, favoritism, and corruption, have the best chance of playing an important rôle. Wherever the system of county highway adminstration has been subjected to careful investigation, one or more of these factors have been found to be more or less active to the detriment of the public service and the public treasury.[22] Aside from the general inability of the average county board to deal with a problem which is so technical in its nature, and aside from the political corruption that construction companies find it profitable to engage in for the securing of and playing off on contracts, the building of the main roads with their bridges has long since ceased to be a matter of purely or even chiefly local concern. So far as rural roads serve merely to connect the various parts of the county with the

[20] The Middle Atlantic, East North Central, West North Central groups.

[21] The Southern states with the exception of the West South Central group.

[22] Gilbertson, *op. cit.*, Chap. x.

county seat and with each other the county could safely be left to worry along with such roads as the indifference, incapacity, or dishonesty of its officials and general inertia of its inhabitants might allow. But the main county roads are more than merely local arteries. They form links in a chain of state highways and must provide for traffic that neither begins nor ends in a given county. To that extent the state has an interest which is paramount to that of the county, though the county, of course, benefits locally from good roads in spite of its general disinclination to insist upon them. To conserve the interests of the state in the provision of good main roads or roads of more than local significance it is both proper and necessary that the state on the one hand contribute toward the expense of such roads, and on the other insure that they be properly built and adequately cared for.

It is in recognition of this fact that, beginning with New Jersey in 1891, states entered upon a program of state aid and state supervision over counties and other local districts in the matter of highway construction. To-day practically every state in the Union has a state highways office and participates to some extent in road building, in some cases merely offering expert advice to counties in their road-building problems, in others paying from one-third to three-fourths of the cost of building state roads under the direction of the state highway office. The policy of state aid and supervision has been most extensively followed in the states along the Atlantic seaboard from Virginia north, but California and Washington on the Pacific and some of the Middle Western states have also gone into this field to a considerable extent.

Within recent years, and particularly as a result of the realization of the importance of good highways for mili-

tary transportation during the recent war, the Federal Government under its powers over post roads has also aided in the good roads movement by appropriating millions of dollars for the building of national highways in coöperation with the states who in turn place a part of the burden upon the counties. In this way the counties are enabled to secure really excellent main highways at a very small part of the expense to them which would be required if they were left, as formerly, to themselves. In France, it may be pointed out, where good highways have long been recognized as an essential element of national military defense, the main roads, not only through the departments but also through the communes, which include all cities, are under the direct administration of the national government.

The system of state grants-in-aid has already done much to improve county roads in many of the states, though it is true that in many counties the people have been unwilling to issue bonds for good roads even where a large part of the expense is paid by the state and national governments and expert supervision of construction is assured.

Charities, Hospitals, and Corrections.— The third most important class of county governmental expenses of a local nature is grouped in the Census reports under the head of Charities, Hospitals, and Corrections. In 1913 the total expense of counties under this head amounted to $37,815,508 representing a *per capita* expense of $0.44. Aside from Rhode Island, which as has been said, shows no county expenditures whatever, Vermont was the only state that reported no county expenditures for these purposes. The total county expenditures under this head in the other states varied from less than half a cent *per capita* in Maine to $1.58 *per*

capita in Nevada. The group showing the largest expenditure *per capita* under this head, as under all the other heads so far considered, was the Pacific group with a *per capita* expenditure of $0.80, while the West South Central group showed the smallest *per capita* expenditure, $0.12, being less even than that of the New England group where two of the six states showed no county expenditures for this purpose and another a *per capita* of less than half a cent.

To these figures must again be added a proportionate share of interest charges and outlays for these purposes. That this would be a considerable item in many states is apparent from the fact that the total value of lands, buildings, and equipment under the head of county charities, hospitals, and corrections was reported in 1913 as $92,645,836, only a little less than the value of schools and libraries. But while only sixteen states showed any county property under the head of schools and libraries, Massachusetts was the only state, excepting of course Rhode Island, that showed no property devoted to charities, hospitals, and corrections.

Poor relief was never an important function of the counties in the American colonies. This duty had been definitely imposed on the parishes in England by the Poor Law of 1601, and in the New England colonies it early became one of the duties of the towns, with the power in the county court to determine controversies as to the duties of towns to provide poor relief under the laws of settlement. In the middle colonies also it was a function of the townships, parishes, or boroughs with an appeal to the county court. In Virginia and South Carolina, also, poor relief was devolved upon the parishes, though about the middle of the seventeenth century the county court was authorized to bind out poor children,

and as early as 1668 county commissioners were required to provide workhouses with the assistance of the vestries.[23]

The later tendency in the new states, and even to some extent in New England, was to entrust the function of poor relief to the county, though at first in the Middle Western states it was entrusted chiefly to the townships, until to-day poor relief is a more or less important function of the county in almost every state.

The record of the American county as an agency for poor relief is not an enviable one. It generally has taken the form either of haphazard unscientific out-door relief, or of even more slip-shod and vicious care in county institutions such as almshouses and poor farms. Children, the aged and infirm, the defective, the sick, the insane, were all grouped together under one head when in need of public aid, and were commonly confined in the same institution, which not infrequently, in the absence of other facilities, was the county jail. County poorhouses and farms were almost never properly administered, were frequently uncomfortable, insanitary, or even indecent, and the system was shot through with the evils of the fee system in connection with commitments and the furnishing of relief.

This sad picture of county poor relief is unfortunately presented even to-day in a very large number of states.[24] A realization of the unsatisfactory status of county poor

[23] See Howard, *Local Constitutional History*, pp. 194–197.

[24] See among others: Gilbertson, *op. cit.*, Chap. ix and Appendix F; Ella F. Harris, "Charity Functions of the Pennsylvania County," *Annals of the American Academy of Political and Social Science* (May, 1913), p. 167; Loeb, "County Government in Missouri," *ibid.*, pp. 56–58; Fairlie, "County and Town Government in Illinois," *ibid.*, pp. 69–70; Burritt, "County Management of Charities, etc. in New York," *Proceedings of the Conference for the Study and Reform of County Government, Second Meeting*, p. 6.

relief came gradually to be reflected in the passage of laws requiring segregation of these various classes of dependents and their care in different institutions. But for the great majority of counties it remained a financial impossibility to provide institutions adapted to each of the various classes of persons falling under the head of those needing institutional care. In the more populous and wealthy counties special homes for the children, asylums for the insane, workhouses for the able-bodied, and hospitals for the sick might be provided locally, but not to any great extent even there. For this reason the states themselves have begun to provide facilities for certain of these classes of dependents. State insane asylums, state institutions for the blind, the deaf and dumb, and the feeble minded, state children's homes, state hospitals, and even state almshouses have been established to an increasing extent since the middle of the nineteenth century.

But these institutions rarely are able to take care of all the dependents falling within the various classes, and the counties even in the states providing such special institutions pretty generally find themselves compelled to take care of various types of paupers requiring separate treatment. In the care of ordinary paupers little improvement has been made, though in various states the central agencies for charities and corrections have been given some authority of inspection and direction, sometimes coupled with provision for state aid.

What is true of charities is equally true of corrections. It has already been seen what a disgraceful institution the average county jail is.[25] Correctional, as distinguished from penal, institutions did not exist in the counties and indeed did not develop at all until the latter part of the nineteenth century, and then as state institutions.

[25] See p. 201.

At the close of the eighteenth century state prisons were first established, thus separating the worst class of offenders from the others confined in county jails. This movement spread very rapidly among the states. Then followed state reform schools for juvenile offenders and reformatories for adult convicts. But the county jail has continued nevertheless to harbor all sorts of offenders, as has been seen, and indeed the needs and resources of the typical county are not such as to permit of special correctional reform institutions in addition to penal institutions. Much could, however, be done that is not now done, to make the county jails themselves as far as possible accord with modern ideas of penology, so that even if they do not turn out reformed offenders, they will at least not continue to remain agencies of complete demoralization of unconfirmed offenders and schools for crime and immorality.

This field of county functions, namely charities and corrections, would seem by its very nature to be one that is not adapted to performance by the county. The number of the various classes of dependents and of those sentenced for crime would normally not be sufficiently large in the average county to warrant the special institutions required for their proper treatment. The *per capita* expense of handling these various classes is too high, except in the case of the permanently incapacitated or those requiring merely temporary relief, for administration by a single county. It, therefore, should be undertaken by the state, each county perhaps contributing a portion of the expense for the care of such persons properly chargeable to it, as is now done in some instances. But if the county is to remain charged with the duty of caring for some or all of these public wards, the state must step in both with financial aid and with administrative super-

vision, combining if need be two or more counties for the provision of adequate institutions.

Within recent years a new form of relief has been entrusted to the counties, in some of the states, in connection with mothers' pensions. Although emphasis is placed upon the fact that this is not intended as a form of public charity, in reality it comes under the head of charity undertakings. This new movement is gaining in favor but has not yet made any great progress, partly because in some cases the financial burden thus imposed upon counties cannot be met out of available county revenues. Not only must the county be granted special sources of income to undertake its share of this extensive new undertaking, but the state must be prepared to bear a large portion of the expense if the desired object is to be attained. In connection with this aspect of county activities, as with all the other functions performed by the county, the question of financial resources plays an important part, as will be seen later on. Not only are many of the rural counties poor in resources, but constitutional and legal limitations commonly prevent the adequate employment of such resources as do exist.

County hospitals, particularly for tubercular patients and those sick with contagious diseases, are found in an increasing number of states, and while they are listed with charities and corrections they are also properly considered under the head of conservation of health, as they serve not merely the indigent persons admitted to them but the general public in preventing the spread of contagious diseases.

Sanitation and the Conservation of Health.— The next largest item, among the classes of local expenditures now being considered, relates to public-health activities of the counties, the total expenditures for which in 1913

were reported at $2,815,466, or a *per capita* expense of only $0.03. None of the New England states showed any county expenditures for this purpose, but otherwise Iowa was the only state which showed no such expenditures, the *per capita* figures varying from one cent in a number of states to sixteen cents in Montana. The remarkably small *per capita* expenditures for public health show very clearly how inadequately this important function is dealt with by the counties, as it has been estimated that adequate public-health protection will require an average *per capita* expenditure of at least ten cents.

Public-health protection represents another activity which began as a local function and has gradually received more and more attention from the state government. But it developed almost wholly in the cities while counties did next to nothing in this direction until the state laws and administration began to compel action. State boards of health date in this country from the establishment of the Massachusetts Board of Health in 1869, but they did not obtain real authority over local areas until at a much later date. Within recent years state health authorities have been given power to insist on the appointment of local health officers in counties as well as in cities and to direct the execution of the state laws in the localities. But county authorities are rarely given any ordinance power and their principal activities are still confined to work by the county physician in treating paupers, prisoners, and inmates of other county institutions, and in developing special activity in times of epidemics or threatened epidemics.

Public health administration could not develop to a high degree of efficiency until comparatively recent times because the great discoveries of preventive medicine are the product of the last decades, and in many important

directions of the last twenty years. But public-health administration has not kept pace with the advance of sanitary science and even the largest and most progressive cities have not approached the ideal of eliminating all preventable disease. The rural sections have lagged far behind the urban centers in public-health work, partly because of general debility from a governmental point of view, but partly also because it has always been believed that public-health problems arise only in cities and as a result of urban conditions. Recent investigations, however, have shown not only that the standards of sanitation and hygiene in the rural districts are as bad as and frequently worse than in the cities, but also that much of the rural disease is easily preventable by the application of the principles of modern sanitation and public hygiene. Furthermore, it has become more and more apparent that the rural areas could not be allowed to ignore the care of the public health without danger to others than merely the inhabitants of the local areas. Modern developments in transportation and travel have made the public-health problem a state-wide and even nation-wide concern and inefficiency or neglect in a relatively restricted area may involve serious consequences in the way of disease and death beyond that area. This is especially true of the food supplies, particularly milk, which the cities secure from the rural areas. Consequently the logical development in public-health administration demands an ever increasing centralization in the state authorities with supervisory and coercive power over the localities. Counties, of course, have a primary concern in the health of their own inhabitants, but they cannot safely be left free to omit proper measures in this regard because of the danger involved to the rest of the state. In public health as in public education, therefore, the establishment of

minimum requirements by state law is essential, combined with a system of state aid and state supervision in the interests of encouraging advanced standards of public-health administration. Already in a number of states the central government and the county are working together to this end, but it is at best merely a beginning. The recent movement for public-health nurses in counties, encouraged and partly supported by the American Red Cross, is a development of much promise for the improvement of rural health conditions which has already received the sanction and backing of the public-health authorities in a number of states.

Recreation.— The next most important class of county expenses shown in the Census reports for the year 1913 was comprised under the head of Recreation. But this item, although amounting in all to $419,556, was almost negligible in relation to other county expenditures, and represented a *per capita* expenditure of less than one-half cent. Furthermore only sixteen states reported any expenditures at all under this head. New Jersey alone reported $300,791, or nearly three-fourths of the total amount; California, Massachusetts, and Ohio following next in order with $45,344, $19,987, and $19,955, respectively, leaving only $33,479 to be distributed among the other twelve states reporting any county expenditure for this purpose.

These relatively insignificant expenditures in most of the states represented contributions by the county for county fairs, carnivals, and celebrations. But in California, Massachusetts, and New Jersey the returns are of real significance because a considerable amount of the expenses for recreation in those states were expended for the laying out and maintenance of county parks, another new development in county functions. The chief

expenditures for this purpose were in metropolitan counties such as Los Angeles County in California and Essex County in New Jersey, but it is a development which promises well in other classes of counties also, and since 1913 other states have authorized counties to provide park systems. In Essex County, New Jersey, the county park commission was erected as an independent corporation, the commissioners being appointed by the judges of the supreme court, because the regular county government was not trusted to handle this new function properly.[26] But this multiplication of authorities is obviously undesirable and public recreation is properly a function that should be handled by the regular county government, provided it can be made reasonably representative and efficient. In fact the extension of the field of county functions, by giving larger powers to the governing bodies of counties may be the means of rescuing the position of county commissioner from the obscurity and unattractiveness which is now one of the main reasons for the mediocre type of persons who are interested in holding this position in the great majority of counties.

Within recent years the development of the rural schoolhouse as a social center promises to remedy that lack of social intercourse and sane recreation and self-improvement which drives many persons from the country into the cities, where not only commercial recreation but public recreation facilities to an increasing extent cater to this fundamental human need.[27] This development requires the recognition of its importance and its encouragement by the local educational authorities, but as an important social welfare activity it should also receive the support of the regular county authorities.

[26] Gilbertson, *op. cit.*, pp. 163, 164.

[27] See Ward, *The Social Center* (New York, 1913).

A significant impetus has been given to the county recreation movement within the last two years by the widespread interest in county memorials to the dead of the recent war. The idea of making these memorials serviceable as well as commemorative has taken hold throughout the country in the form of movements for community buildings and public parks that will serve the social and recreational needs of the people of the county. They offer also some promise in the direction of bringing together the rural population of the county with the citizens of the county seat, who are now frequently hostile to each other, chiefly, perhaps, because largely strangers.

Public recreation and social welfare generally, seem to present a field of activity in which the inhabitants of the county have a paramount interest and which they should be given legal and financial power to provide, though here, too, the state might stimulate interest and action by rendering some financial assistance. It must not be forgotten in this connection, nor indeed in connection with the discussion of any phase of county government and functions, that the American county is for the most part an artificial unit. The inhabitants of a given county have few social and economic interests in common and little basis for a community of feeling, growing out of associations and traditions. If the county is to become a successful area of local government, therefore, everything that tends to amalgamate the population and create a county community sentiment becomes of vital importance, and public recreation offers one of the most promising opportunities for hastening this process.

Public-Service Enterprises.— The last class of county expenditures to be considered under this general group of local functions is that for public-service enterprises. This represents an even more insignificant activity, meas-

ured from the point of view of expenditures, than that of recreation, the total expenses for this purpose in 1913 being reported as only $189,122. Furthermore only fourteen states showed any county expenses at all for public-service enterprises, and these all came from only twenty-eight counties out of more than three thousand. The total value of lands, buildings, and equipment of county public-service enterprises was reported as $2,125,710, distributed in thirteen states. Three of the states showing expenses for this purpose reported no property values under that head, while two states showed property values for county public-service enterprises but no expenses. Two more states showed receipts from public-service enterprises, but no expenses and no property values. The total number of states then from which county public-service enterprises were reported was eighteen, and the total number of counties was forty.

The expenditures reported under the head of county public-service enterprises were for a variety of purposes including ferries, toll bridges, wharves, drainage ditches, cemeteries, dispensaries, memorial halls, and the sale of seed and grain to farmers. In some states counties are authorized by law to provide public utilities of almost any kind, but this power has practically not been used. For many kinds of public-service enterprises in the rural sections over which the county might be given authority such as drainage and irrigation districts, levees, and dikes, the usual practice is to create special improvement districts. For undertakings which extend beyond the limits of a single county this method presents the only practicable solution. But for public-service undertakings within the limits of a single county it would be much better to entrust the administration to the county with the power to levy special assessments on the property benefited, than

to erect special corporations with independent governmental machinery and taxing powers. In fact the tendency to multiply within the county the number of special independent corporations with taxing powers is, as will be seen, one of the weaknesses of our system of local government, caused in part by the constitutional debt limitations and other financial handicaps placed upon the counties.

It seems likely that with increased population and the growth of interurban utilities the county may become a more important unit for public-service undertakings, but at present it can scarcely be said to perform a very important function in that field.

Miscellaneous Expenses.— The Census figures for 1913 reported under the head of miscellaneous expenses the sum of $5,574,800, an amount considerably larger than the totals for public health, public libraries, recreation, and public-service enterprises put together. This amount represents expenses reported but not so itemized as to be capable of classification under any of the enumerated heads. It throws no light, therefore, on the extent of particular county functions, but must be included in the grand total of expenses, and introduces a source of slight, though appreciable, error into all the other calculations. It does throw some light, however, on the unsatisfactory condition of accounting and reporting methods in counties, which has already been referred to and which will be considered again under the next section dealing with county finances.

County Finances

County Revenues.— So far as we have been considering what the county as a governmental unit does and how much money it spends on each class of activities.

There remain to be considered the sources of revenue available to the county, the kinds of revenue actually received, and the methods of finance administration.

Adopting the United States Census classification of county revenues we shall consider them under two general heads, revenue receipts and non-revenue receipts, for the year 1913, the last year for which complete reports were available.

Revenue Receipts.— The term revenue receipts as employed in the Census reports is applied to "the moneys and other wealth received by governmental units for governmental purposes, which increase their aggregate assets without increasing their debt liabilities." Revenue receipts of counties so defined are classified under fourteen heads which, ranked in the order of the amounts received from each source, are as follows: General Property Taxes; Earnings of General Departments; Subventions and Grants; Special Assessments and Charges for Outlays; Liquor Licenses and Other Imposts; Poll Taxes; Interest and Rents; Fines, Forfeits, and Escheats; Nonbusiness License Taxes; Business Licenses other than Liquor Licenses; Special Property Taxes; Earnings of Public Service Enterprises; Donations and Gifts; and Highway Privileges. The total amount of these revenue receipts reported in 1913 was $370,043,046 representing *per capita* revenue receipts of $4.32, as compared with total governmental cost payments of $385,181,760, or $4.49 *per capita,* for the same year. But the governmental cost payments included outlays for permanent improvements, a part of which at any rate were paid for out of funds received from the issue of debt obligations during that year, which source of income is not listed under revenue receipts but under the head of non-revenue receipts to be considered later.

General Property Taxes.— By far the most important source of county revenue receipts is the general property tax. The total income from this source in 1913 was $282,077,069, a *per capita* income of $3.29, or more than 76 per cent of the total. In every state in the Union, except Rhode Island where counties have no taxing power, the general property tax represented the source from which much the greater part of the total revenue receipts were derived. The *per capita* income from this source varied from $0.07 in Vermont to $15.64 in California, and by groups of states from $0.77 in New England to $12.48 in the Pacific group, the second most important group from the point of view of receipts from the general property tax being the Mountain group [28] with a *per capita* figure of $7.81.

The taxing power of counties is limited in various ways. In the first place, counties enjoy the taxing power only to the extent that it is expressly conferred upon them, both as regards the kinds and the amount of taxation. In the second place, the power of taxation by counties is subject, of course, to all the limitations which the Federal Constitution imposes upon the taxing power of the states, for what the state may not do it cannot authorize its subordinate governmental divisions to do. These limitations cannot be considered in detail here, but they include among other restrictions, prohibitions on taxing Federal agencies or instrumentalities, imports and exports, interstate commerce, as also limitations imposed by the Fourteenth Amendment.[29]

[28] Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada.

[29] For a detailed discussion of the relation of the Federal Constitution to the taxing power of municipalities, which presents the same phases as it does with regard to counties, see Dillon, *op. cit.*, Chap. xxvii.

In the third place, all state constitutions have general provisions that limit the exercise of the taxing power in various ways and that apply to the subdivisions of the state as well as to the legislature. Chief among these are the requirement that taxation must be for a public purpose, and the requirement, still found in the constitution of a number of states, that taxes shall be equal and uniform.

In the fourth place, the constitutions of about a third of the states contain special provisions relating to the taxing power of counties. So, for example, they limit the rate of taxation that may be levied by counties under the general property tax to a fixed maximum per hundred dollars of assessed valuation, but permitting in some cases that maximum to be exceeded upon a referendum vote in the county. These constitutional limits are set at as low a figure as $0.50 on the hundred dollar valuation in some states.[30] So also, they forbid taxation for certain purposes.

Finally, the legislatures of most states have fixed a maximum rate of taxation, in addition to specifying the purposes for which various proportions of the levy may go, and describing in detail the manner of assessing the property and collecting the tax.

The constitutional and legislative restrictions on the taxing power of counties were intended, in the language of a number of the constitutions, "to prevent abuses." But as is the case with so many of the checks and supposed safe-guards that characterize the American constitutional system, the limitations have been more successful in preventing progress than in abolishing abuses. A fixed and arbitrary maximum, unless put high enough to be of no practical effect, fails to take account of the

[30] E. g. Arkansas.

great differences that exist among counties as regards their resources and needs, and assumes that the representatives of the local taxpayers are certain to indulge in improper extravagance unless effectively checked. But with the increasing burdens that have been thrown upon the county by the state, and the increasing local needs resulting from increased population and expanding conceptions of what governments are supposed to do, these limitations are quite as likely to hamper counties in the legitimate and necessary extension of their activities, as they are to prevent improper expenditure. This latter result is, in fact, already being experienced in the counties of a number of states. If restrictions on the amount of taxation are desirable, and to a certain extent they are necessary both for the protection of the local taxpayers and of the larger state interests, they could better be secured by requirements of local referenda and of approval by state administrative authorities in a position to give proper weight to the special considerations of local resources and needs in each county.

It has already been pointed out in an earlier chapter that the process of assessment of property for taxation, performed as it is for the most part by untrained politicians, presents a most unsatisfactory phase of tax administration. The interests of the local taxpayers suffer because this important function is performed by unqualified amateurs instead of by competent experts, and the interests of the state, which derives most of its revenues from the general property tax, suffer because the temptation for each county to escape its fair share of state taxation leads to systematic undervaluation. State supervision over this phase of tax administration is, therefore, essential if county officers are to continue as agents of the state for assessment purposes.

Earnings of General Departments.— Next in importance, as a source of revenue receipts, though far behind the general property tax, come the earnings of the general departments of county government. The total income from this source in 1913 was $28,564,467, amounting to $0.33 *per capita,* or a little more than 7.5 per cent of the total revenue receipts of counties. The *per capita* income from this source varied from $0.01 in Vermont to $1.20 in Nevada.

This amount represents chiefly the fees and charges received by the counties for services performed by their general departments, and differs from taxation in that it is based on benefits received and is borne by the persons directly served instead of by the general public. This aspect of the fee system, as has been pointed out, is not objectionable, though where the act performed is required by the state, and the general public good demands its accomplishment, as in the case of the recording of deeds, the issuance of marriage licenses, etc., it would be proper for the public to bear a part of the expense. But if the states that do not limit the amounts which the officers performing these acts may derive in total fees to a reasonable remuneration for the work performed would do so, this source of county income might be considerably increased in many counties.

Subventions and Grants.— Of nearly equal importance with the earnings of general departments as a source of county revenues in 1913 were subventions and grants, which totalled $23,682,813, or $0.28 *per capita,* constituting something over 6.5 per cent of the total revenue receipts. These consisted for the most part of financial aid extended to the counties by the states.

It is worth noting that while general property taxes and earnings of general departments were reported as sources

of county revenue receipts in every state except Rhode Island, one-fourth of the states, in addition to Rhode Island, reported no income from subventions and grants in 1913. Of the New England states Connecticut alone showed any receipts from this source.[31] In the states showing any entries under this heading, the *per capita* amounts varied from less than one-half of one cent in Arkansas to $2.51 in California, the *per capita* figures for groups of states showing the largest amount again in the Pacific states, though Maryland ranked next after California in this respect.

As has already been pointed out, there are two important aspects of the policy of rendering state financial aid to county governments. In the first place, the county, though no longer purely an agency of the state government, is performing some purely state functions and others that are of direct benefit to the state as a whole. The state, which has sources of revenue not available to the counties, should bear, therefore, a part of this expense, especially in view of the limitations which are imposed on taxation by the county. In the second place, the extending of state aid to counties upon certain conditions enables the state to exercise effective supervision over county functions in which it has a vital interest without arousing the opposition of local sentiment against state interference. The Census reports distinguish between subventions as contributions received with certain prescribed conditions, and grants as contributions made without the prior establishment of conditions. But the statistics are not given separately for the two classes of contributions. It would seem, however, that the introduction of the system of subventions in the states which do

[31] In Vermont $1,200 was reported as the total, less than .4 per cent of the county revenue receipts in that state.

not now employ it, and the proper extension of its application in the states where now found would at one and the same time relieve counties of an unfair burden and operate in the direction of satisfactory state supervision and control.

The state aid reported in 1913 was chiefly for education and highway purposes, though in some states counties receive a portion of the state income from certain sources, such as state lands, without any designation of the purpose to which the income is to be applied.

Special Assessments.— The next most important source of county revenue receipts, judged from the total amount received, is that derived from special assessments, which the Census defines as proportional contributions of wealth levied against land and collected from its owners and occupants to defray the costs of specified public improvements made, or of specified services undertaken, in the interest of the general public. But this definition omits the fundamental distinction between special assessments and other forms of taxation which rests in the fact that while taxes are levied without reference to the special benefits which the contributors may individually derive from the public purposes for which the taxes are required, special assessments do rest upon the basis of such special benefits, and the amounts derivable from such assessments are limited by the increase in value of the property assessed.[32]

The total income from special assessments in 1913 was $9,323,978, a *per capita* income from this source of only $0.11, or 2.5 per cent of the total revenue receipts. Furthermore, this item of income appeared in the returns from only a little more than half the states. None of the New England states, only two of the eight South At-

[32] See Dillon, *op. cit.*, Chap. xxviii.

lantic states, and three of the eight Mountain states showed any county income from this source. In the twenty-seven states in which this item appeared as a source of county revenue, the *per capita* income varied from less than one-half cent in five states [33] to $0.54 in Ohio.

This source of revenue, which was most extensively used in the Middle Western states, would seem to offer larger possibilities of financial relief for the public works undertaken by counties than have yet been realized. It is an eminently fair burden, since it is roughly proportioned to the property increases enjoyed by the persons taxed and is in most cases limited to such increase. The extension of the power of levying special assessments to counties in those states where it is not now granted and the more extensive use of the power where it exists but is only slightly used, are developments that would help solve the increasingly acute problem of securing sufficient county revenues.

Liquor Licenses and Other Imposts.— One important source of county revenue in a number of states in 1913 has now completely disappeared as the result of the adoption of the Prohibition Amendment to the Federal Constitution. The total county revenues from this class of receipts in the twenty-seven states in which this item appeared were $6,577,556 or $0.08 *per capita,* constituting 1.9 per cent of the total revenue receipts, most of which came from liquor licenses. Under the system of local option on liquor licenses for counties, there were in 1913, more than seven hundred counties that derived an income from this source, which now, as the result, first of the spread of no-license areas, then of state-wide prohibition, and now of the Eighteenth Amendment, must turn to

[33] New Jersey, Tennessee, Arkansas, Texas, and Colorado.

other sources to supply the former income from liquor licenses.

Poll and Occupation Taxes.— Poll and occupation taxes constitute the next largest source of county revenues and are defined by the Census as all exactions from private individuals which are levied without regard to the property or income of the taxpayer. They include capitation taxes, poll taxes graded in amounts according to occupation, and all exactions of personal service, such as work upon the highways.

The total income from these sources was reported in 1913 at $5,817,855, a *per capita* income of $0.07, amounting to 1.5 per cent of the total income. Income from this source was reported from twenty-nine states, limited to the Southern and Western states. Sometimes these poll taxes are levied as part of the property tax on all males of voting age with certain exemptions, sometimes they are virtually optional contributions as conditions precedent to voting. In some of the Southern states they are imposed rather as a check on the negro vote than as a source of revenue. Their importance as a source of revenue is limited to a relatively few states[34] and they have the serious drawback of constituting a taxpaying qualification for the franchise, small though it be.

Interest and Rents.— Almost of equal importance as a total source of revenue with poll taxes, was the income counties derived in 1913 from interest and rents, which included receipts from rents of real property belonging to investment, sinking, and public trust funds and from other real property owned by counties but not set apart for the use of any particular department.

[34] Notably Arizona, Idaho, Kentucky, Montana, Mississippi, North Carolina, North Dakota, and Tennessee where the *per capita* revenue is from $0.20 to $0.67.

The total revenues from this source amounted to $5,531,485, a *per capita* revenue of $0.06, or about 1.3 per cent of the total revenues. This source of revenue was, however, much more general than poll taxes, as Delaware was the only state, in addition to Rhode Island, that reported no county revenue from this source. The highest *per capita* revenues from this source were found in the Middle Western states.[35]

Fines, Forfeits, and Escheats.— The last source of county revenues that yielded nearly 1 per cent on the total county revenue receipts in 1913 were those classed under this heading, the three subdivisions of which are defined by the Census as follows. Fines are amounts of wealth extracted from individuals, firms, and corporations, under the sovereign power of inflicting punishment for violation of law. Forfeits are amounts accruing to government in accordance with the terms of contracts as penalties for non-observance of such contracts. Escheats are amounts of money received from the disposal of properties the owners of which cannot be ascertained or located.

This source of revenue, totaling $3,531,485, or $0.04 *per capita,* was reported from all but five of the states, the *per capita* yield varying from less than one-half cent in three states to $0.19 in Arizona and Florida.

Miscellaneous Revenue Receipts.— The remaining six classes of revenue receipts listed in the Census reports amounted in the aggregate to $4,844,250 or a little more than 1 per cent of the total. Because of their relative insignificance they need not be considered separately in detail. *Non-business license taxes* were reported from nearly all states, except those in the New England group.

[35] $0.37 *per capita* in Indiana; $0.19 *per capita* in Missouri and North Dakota.

Business licenses other than liquor licenses were the source of county revenues in thirty states, mounting in Nevada as high as $0.82 *per capita*. *Special property taxes,* that is, direct taxes levied upon property which are assessed, levied, and collected by methods not generally employed in the case of real property, were reported from twelve states. They included chiefly corporation taxes of various kinds. *Earnings of public service enterprises* were reported from a third of the states.[36] Finally, *donations and gifts,* which aggregated $283,233 for all counties, were reported from an equal number of states.

There would appear to be little prospect of enlarging the revenue receipts of counties from these sources to any considerable extent. License taxes might perhaps be used more extensively and counties might well be accorded a larger share of the taxes imposed upon corporations owning property or doing business within their limits. But the relief which counties need in the direction of larger revenues will have to come chiefly from an expansion of some of the other sources of county income, as indicated in the preceding pages.

Non-Revenue Receipts.— Non-revenue receipts include all receipts other than the revenue receipts already considered. They are classified in the Census reports under five sources: (1) Sales of investments and supplies; (2) Trust and agency transactions; (3) Counterbalancing transactions; (4) General transfers; and (5) Issue of debt obligations. Only the last source of non-revenue receipts need concern us here, for the first class of receipts totaled only $3,383,364 for all counties, and the other three classes did not represent an actual increase of the financial resources of the county. The receipts from trust and agency transactions were not available for

[36] See *supra,* p. 231, for expenses of public-service enterprises.

county expenditures, and the counterbalancing transactions and general transfers did not affect the total resources of the counties at all.

Receipts from the issue of debt obligations, however, did constitute an important item in the financial resources available for county purposes, for while they were offset by corresponding debt liabilities, the receipts were immediately available, while interest and repayment of the capital were spread over future years.

Of the total receipts from the issue of debt obligations, amounting in 1913 to $86,051,348, or a little more than one dollar *per capita,* the smallest *per capita* receipts were in the New England group, $0.48 and the largest in the Pacific group, $2.31. Every state in the Union, except Rhode Island, reported county receipts from this source, varying from $0.08 *per capita* in Vermont to $4.83 in Montana.

The power of counties to issue debt obligations, like the taxing power, is exercisable only to the extent and in the manner in which it is expressly granted by the constitutions or by acts of the state legislatures. Constitutional grants of power to incur indebtedness are rare, but constitutional restrictions on this power are very general.[37]

In the first place, three-fourths of the state constitutions expressly prohibit counties from incurring debts for the purpose of aiding private or corporate enterprises, with certain specified exceptions. This general prohibition dates from the era of railroad building when it was quite common for counties to be authorized by the state legislatures to subscribe to the capital stock of proposed railroads through their territory.

[37] See *Index Digest of State Constitutions,* prepared for the New York State Constitutional Convention, 1915, under title Counties, Subtitle, Debt, pp. 271–289.

In the second place, in fully half of the state constitutions there are provisions that prohibit counties from incurring indebtedness, with certain specified exceptions, except upon approval of the qualified electors or taxpayers of the county, either by simple majority vote or by a designated vote greater than a majority. The exceptions relate chiefly to indebtedness below a certain amount, or for special purposes, particularly for the refunding of valid bonds. These restrictions have been generally reproduced in the legislation authorizing county bond issues in those states also that do not have constitutional restrictions of this kind.

Thirdly, more than half of the state constitutions impose a limit beyond which the counties may not become indebted, with or without a local referendum, and no matter for what purpose. These constitutional debt limits vary greatly in the different states, from 2 per cent of the assessed property valuation to as high as 25 per cent for specified purposes, in addition to other county indebtedness.

Finally, a considerable number of state constitutions contain provisions relating to the length of time for which bonded indebtedness may run and requiring provision for the collection of an annual tax sufficient to pay the interest and create a sinking fund adequate to pay the principal at maturity. These limitations are also quite generally found in the laws of the states without such constitutional provisions.

The power to incur indebtedness and to issue negotiable bonds evidencing the same is a very necessary one for counties. It has already been pointed out that at the end of 1913 the total value of lands, buildings, and equipment of counties amounted to the sum of $576,656,715, or $6.72 *per capita*. This property rep-

resented improvements of a more or less permanent nature which would last for a number of years. The expenditures for such improvements in the one year mentioned amounted to nearly $90,000,000, or more than 23 per cent of the total governmental cost payments. Such a sum could not be raised by taxation in a single year without superimposing a very serious burden on the taxpayers already charged with meeting the operating expenses of the county government. Nor would it be fair or wise finance to attempt to raise such a sum in one year for improvements, the benefits of which would last for many years. Such a policy would soon cripple the counties to the point where needed improvements could not be financed. A better plan, therefore, is to distribute the cost of such improvements over the period of years for which they are serviceable.

But this method of financing permanent improvements, while reasonable in theory, presents many serious dangers in practice. The temptation to use the borrowing power for paying for current expenses, the attraction of making loans for a given improvement run for a longer time than the life or usefulness of the improvement, the danger of failing to observe proper measures for creating the necessary sinking fund, are all possibilities that spell ultimate financial disaster unless they are carefully guarded against. More important than the limitations imposed upon the total amount of bonded indebtedness of counties, are safeguards against these abuses of the borrowing power. And these are matters which legislation may cover in detail but which experience shows cannot be adequately dealt with by legislation alone. They require for their adequate treatment, expert administrative supervision by higher authorities. Even the apparently simple matter of fixing the maximum amount of

authorized indebtedness is a subject that cannot be properly governed by rigid constitutional or statutory limitations. The general financial conditions of each county, the fundamental needs that have not yet been met, the nature of the purpose for which a bond issue may be desired, the relation between market values and assessed values, are all factors that influence the propriety of a proposed additional indebtedness, much more than does the mere relation of bonded indebtedness to assessed valuation.

In this respect the example of England which for half a century has controlled the matter of indebtedness by local government corporations through the Local Government Board, a central department equipped with an adequate staff of experts in local finance, seems to point the way for progress in this respect in the United States. This English department authorizes loans only after careful investigation of all the factors involved and imposes conditions on the raising and expenditure of the funds derived from this source which by a continuing inspection it can enforce. These are technical matters of finance administration which the local electorate is in no position to judge of or control, except in a purely negative way. The refusal of the local taxpayers to authorize a proposed loan may be a proper reason against making it, though even that is doubtful, but their approval is not necessarily a proper reason for authorizing it. The local taxpaying electorate may be quite willing to shift present burdens to future years to an extent and in a manner that cannot be permitted if ultimate insolvency is to be avoided. On the other hand the reaching of an arbitrary or statutory debt limit may not in a given case throw the least light on the question of whether a proposed bond issue is necessary or advisable.

Practically no steps have been taken in this country in the direction of administrative control of county indebtedness. In some states, it is true, the attorney general of the state is required to approve of bonds before they can be legally issued. But such approval depends merely on the compliance by the county with the legal formalities prescribed as to the manner of authorizing the loan, the proper local referendum, the legality of the purposes of the loan, and its relation to the established debt limit. It is not dependent in any way upon considerations of expediency or necessity, nor is the subsequent administration of the debt incurred subject to the supervision of the attorney general. What is needed, therefore, is the substitution of a competent administrative control for the present rigid, inexpert, constitutional and legislative control, supplemented by the requirement of local referenda. If counties are to carry on their functions in a way to meet the expanding needs of government, they must be given larger borrowing powers. But those larger powers must be adequately supervised in the interests of sound finance.

Budgets and Accounting.— So far we have been concerned in this chapter with the things which county governments do, how much they spend, and where they get the necessary funds. It remains to consider briefly the questions of accounting and budgets, the former dealing with the records of the financial transactions involved in county activities, the latter with the orderly planning of county expenditures and their relation to county income. As the second aspect of county finance is dependent upon the proper performance of the first, the matter of county accounting will be first considered.

The inefficiency and generally unsatisfactory nature of county government is, perhaps, nowhere better re-

flected than in the matter of handling the county finances. At any rate we have more definite and tangible evidence of such inefficiency in this phase of county government as a result of numerous investigations made within recent years into the state of the accounting and general business methods of counties, than in the various individual fields of activity. Indeed it is largely as a result of such investigations that our knowledge of the general weakness of county administration has become definite and demonstrable.[38]

It is not possible here to reproduce the evidence of dishonesty, carelessness, and lack of system in the handling and reporting of county finances which these investigations have brought to light.[39] One competent investigator has declared that inefficient organization and administration result in more than doubling the cost of county government over what would be required for doing

[38] Among recent investigations going into county accounting and budgets may be mentioned: The reports of the Chicago Bureau of Public Efficiency on Cook County, Ill.; Crecraft, "The Government of Hudson County, New Jersey"; "Milwaukee County (Wis.) Government," bulletin of the Milwaukee City Club; publications of the Westchester County (N. Y.) Research Bureau; bulletins of the Alameda County (Cal.) Tax Association; reports of the Civic League of Cleveland, Ohio; "Government of Monroe County," for the New York Constitutional Convention Commission; "Government of Nassau County," Commission on the Government of Nassau County, N. Y.; "City and County Administration in Springfield, Ill.," Russell Sage Foundation; Maxey, "County Administration."

[39] See also, Boyle, "County Budgets," *Annals of the American Academy of Political and Social Science* (May, 1913), pp. 199–212; Cartwright, "Some Needs to be Considered in Reconstructing County Government," *Proceedings of the First Conference for Better County Government*, pp. 5–20; Rockefeller, "County Government from the State Comptroller's Standpoint," *Proceedings of the Conference for the Study and Reform of County Government, Third Meeting*, pp. 12 ff.

efficiently the things the county now does inefficiently. Here obviously is the most promising field for increasing county resources, by making every dollar now spent do more than double its present duty.

The installation of proper accounting methods and the insistence on their being employed are very clearly not matters which the local electorate can insure. Something could be done and something has been done by providing county auditors with power to insist on scientific accounting methods and to disallow improper expenditures. But the public is not in a position to elect such an officer on the basis of his technical qualifications or to check up on the proper performance of his highly intricate duties. The only remedy seems to lie in the system of state auditing of local accounts. Uniform county accounting on a scientific basis is not only of the utmost importance to the state in supervising the performance of the functions performed by the county for the state, but it is also important for the counties themselves in furnishing a basis of comparison of their expenditures and returns with those of other counties.

Within recent years there has been marked progress in the direction of state control over local accounts, particularly since 1902 when Ohio adopted a comprehensive system of uniform accounting, reporting, and auditing, for every public office, state and local. Other important states followed until now more than half of the states exercise some supervision over county accounting. There still remains a great deal to be done, however, before adequate state supervision in this direction is generally secured.

Scientific accounting is the *sine qua non* of a correct budget system, and the latter cannot be looked for until the former is attained. Of the importance of the budget

in governmental administration nothing need here be said. In the United States we are unfortunately suffering from its almost universal absence in our governments, from that of the Federal state down through our states to the smallest governmental unit we have. But in our local governments, there is another condition precedent to a real budget, and that is the centralization of all the appropriating power in the hands of a single body. Until all sources of county income are subject to a single authority which can apportion them according to the needs of the county as a whole, there can be none of that careful planning which is the essence of the budget. Simplification of the governmental machinery of the county and centralization of responsibility must precede, therefore, the establishment of a really satisfactory budget system. But even with conditions as they are, real progress can be made in almost every county by the adoption of proper accounting, reporting, and auditing methods and the systematic planning of proposed expenditures with reference to estimated income, combined with strict control to assure expenditures in accordance with appropriations, that constitute basic elements of every governmental budget.

Summary of Functions of County Government.—Viewing counties as a whole, then, from the point of view of their functions, and keeping in mind the extensive variations that make all generalizations hazardous, it may be said: (1) that counties are *quasi*-public corporations of limited express powers; (2) that county functions fall into two general classes, those of preëminently state concern, and those of primarily local concern; (3) that the state functions are more generally performed by counties than the more local functions, and require about half of the expenses; (4) that among the local functions high-

SUMMARY OF RECEIPTS OF COUNTIES, 1913 *

Revenue Receipts:	*Total*	*Per Capita*	*Per Cent*
General Property Taxes.....	$282,077,062	$3.29	76.3
Earnings of Gen'l Dept's...	28,564,467	.33	7.5
Subventions and Grants	23,682,813	.28	6.5
Special Assessments	9,323,978	.11	2.5
Liquor Licenses and Imposts	6,577,556	.08	1.9
Poll Taxes	5,817,855	.07	1.5
Interest and Rents	5,531,485	.06	1.4
Fines, Foreits, and Escheats	3,531,537	.04	.9
All Others	4,936,293	.05	1.3
Totals	$370,043,046	$4.32	100.0
Non-Revenue Receipts:			
Sales of Investments, etc...	$ 3,383,364	$0.04	96.1
Issue of Debt Obligations ..	86,051,348	1.00	3.9
Totals	$ 89,434,712	$1.04	100.0
Totals of Revenue and Non-Revenue Receipts	$459,477,758	$5.36	

ways, charities, and education are the most widespread and account for much the largest part of the expenditures in this group, while public health, recreation, and public service enterprises are found to a limited extent only among county functions and involve the expenditure of relatively small amounts of money at present; (5) that state control over education, highways, charities, and public health is steadily increasing; (6) that counties are strictly limited by constitutional and legal restrictions in their taxing and borrowing powers; (7) that county finance administration is from nearly every point of view inefficient; and (8) that the remedy for this condition must be found in the system of state administrative control which is beginning to be exercised over assessments of property, and accounting methods, and which should be extended to the matter of indebtedness.

* Trust and agency transactions, counterbalancing transactions, and general transfers are omitted from this table as not throwing any light on the real receipts and payments of counties as local government units.

SUMMARY OF RECEIPTS OF COUNTIES, 1913 *

Governmental Cost Payments:	*Total*	*Per Capita*	*Per Cent*
State Functions:			
General Government	$102,334,964	$1.19	26.5
Protection to Persons and Property	15,213,229	.18	4.0
Totals	$117,548,193	$1.39	30.5
Local Functions:			
Schools	$ 57,682,193	$0.67	14.9
Highways	55,514,891	.65	14.4
Charities, Hospitals and Corrections	37,815,508	.44	9.8
Public Health	2,815,466	.03	.7
Recreation	419,556	Less than ½ cent	Negligible
Libraries	364,712	" " " "	"
Expenses of Public-Service Enterprises	189,122	" " " "	"
Totals	$154,801,450	$1.79	25.8
Miscellaneous	$ 5,574,800	$0.07	1.5
Interest	$ 17,417,593	$0.20	4.5
Outlays	$ 89,839,726	$1.05	23.3
Total Governmental Cost Payments	$385,181,760	$4.49	100.0
Non-Governmental Cost Payments:			
Purchase of Investments and Supplies	$ 5,106,811	$0.06	8.0
Redemption of Debt Obligation	$ 58,965,207	.69	92.0
Totals	$ 64,072,018	$0.75	100.0
Totals of Governmental and Non-governmental Cost Payments	$449,253,778	$5.24	

* Trust and agency transactions, counterbalancing transactions, and general transfers are omitted from this table as not throwing any light on the real receipts and payments of counties as local government units.

CHAPTER V

THE SUBDIVISIONS OF THE COUNTY[1]

Having considered the organization and functions of the county as the basic unit of local government in the United States, it remains to consider the governmental units smaller than the county, for in all states there are such subdivisions. The organization and functions of these subdivisions have an intimate relation to the general county government, as has already been pointed out, for one of the most distinguishing features of the different types of county government found in the United States was seen to lie in the importance accorded to these subdivisions as compared with the county itself.

As the principal distinctions between counties from this point of view are to-day very similar to those already noted in the discussion of counties in colonial times, it is convenient to adopt the same grouping for purposes

[1] The development of the township in the United States from colonial times to about 1890 is set forth in considerable detail in Howard, *Local Constitutional History,* Part I. The most comprehensive treatment of the minor divisions of the American county is to be found in Fairlie, *Local Government in Counties, Towns and Villages,* Part III, to which the author is largely indebted for the descriptive material in the present chapter. Briefer references will be found in Munro, *The Government of the United States,* Chap. xxxix; Beard, *American Government and Politics,* Chap. xxix; Hart, *Actual Government* (New York, 1908), Chap. x; and Bryce, *The American Commonwealth,* rev. edition (New York, 1910), Vol. I, pp. 600–603. Mention may also be made of the article on Towns and Townships, in the *Cyclopedia of American Government,* and the discussion in Bulletin No. 12 of the Illinois Legislative Reference Bureau prepared for the Constitutional Convention on County and Local Government in Illinois.

of discussion here. Accordingly the New England town, the Central townships, and the county districts of the South and West, will be separately considered. The smaller urban divisions such as villages, towns, and boroughs will be considered together, while the larger urban units commonly designated cities will be considered separately in the two following chapters.

The New England Town

In an earlier chapter it has been pointed out that in New England the town antedated the county, and, indeed, in some of the colonies the colonial government itself, and that even with the subsequent introduction of the county system, the town remained the constitutional unit as regarded fiscal and military matters and the selection of representatives in the colonial legislature. This position of relative importance the New England town has in general preserved until the present day, while not only the position of the town but its very organization even, are not appreciably different to-day from what they were nearly three hundred years ago.[2]

In the first place, it is to be noted that the New England town to-day, as in colonial times, is not necessarily or even usually an aggregation of inhabitants in a relatively restricted area. On the contrary, the typical town includes considerable rural territory in which there may be one or more settlements or villages, the average area of such towns approximating in geographical extent the Western congressional townships of nearly thirty-six square miles. The New England town is in fact the primary unit of local government, there being normally no other smaller units except the incorporated cities, which commonly have absorbed the former town governments

[2] See Chap. ii, above.

of the same name. In Massachusetts there are no other units of local government below the town, while in New Hampshire and Vermont the few existing incorporated villages are parts of the towns in which they lie. In Connecticut there were in 1910 twenty-six incorporated boroughs, and in Maine twenty-one incorporated villages. In Maine, New Hampshire, and Vermont there remain a few vestiges of the older rural subdivisions under the names of plantations, grants, gores, and locations, and in northern Maine there are a large number of townships laid out in a more recent period on the rectangular plan of the Western townships.

There were in 1910 some 1,400 towns in New England, varying in population from as few as thirteen in Millsfield town, New Hampshire, to as many as 27,792 in Brookline, Massachusetts. Of the total number, more than 1,100, or over three-fourths, contained less than 2,500 inhabitants and were classed, therefore, as rural communities by the Bureau of the Census. A relatively small number of towns showed a population exceeding five thousand, and in not all of these was the population wholly centered in one community, so that real urban conditions were met with in comparatively few of these towns.

Towns were not regarded as corporations in any sense until near the close of the seventeenth century when they were accorded the right to sue. Not until 1785 were the towns incorporated by general law and accorded the usual corporate powers to sue and be sued as corporations, to hold and dispose of real and personal property, and to make contracts in execution of their functions. For a long time New England towns, particularly in Rhode Island and Connecticut, claimed the possession of certain inherent and inalienable rights and powers, but the law

is clearly established that they derive all their powers from legislative grant and can exercise no powers not so conferred, with the corollary that their powers are subject to amendment or repeal by the legislature unless protected by constitutional provisions.[3] Such constitutional provisions in the New England states are rare, the principal ones being those relating to the right of the towns as corporations to choose representatives in the state legislature, except in Maine and Massachusetts where the county is made the electoral district for the state legislature.[4] As a matter of fact the towns are subject to continual interference by the legislature, especially in the matter of having additional duties thrown upon their officers by the state.[5]

In addition to their corporate powers, the New England towns enjoy a wide range of powers conferred upon them by general or special legislative acts, some of which enlarge their freedom of action, but many of which, as has been pointed out, impose mandatory obligations. The original powers of towns, which were broad in their day, have been amplified to meet the needs of larger aggregations of people and more extensive conceptions of governmental functions, and the range of activities of these units to-day approximates that of the incorporated city. The power of enacting by-laws or ordinances for the preservation of peace and order and the internal police of the towns, and the power to levy and collect taxes for the management of their prudential affairs, have grown with

[3] See, Dillon, *Municipal Corporations,* fifth edition, Vol. I, §§ 40–42.

[4] As a result of the representation guaranteed to the towns in the other New England states, there are glaring inequalities of representation in favor of the smaller towns which have led to their being designated as "rotten boroughs."

[5] See, Munro, *The Government of the United States,* p. 567.

the enlarged significance attached to these terms to-day, while the original town functions of poor relief, highway construction and repair, and the support of schools have also imposed ever increasing burdens upon them. The development of public services in modern times has been reflected in increased powers and resources accorded to the towns to provide such services.

It will be seen from this enumeration that many of the important functions of rural government which are elsewhere, as has been shown, commonly entrusted to counties, are in New England left in the care of the towns. On the other hand, the more strictly urban needs of more congested settlements, which in other parts of the country, as will appear, were met by the practice of incorporating these settlements as villages, boroughs, or towns, have also in large part been left with the town in New England. In 1910 there were in the whole of New England less than a hundred incorporated cities taken out of the town system of government, and even in some of these the town organization continues alongside of the city government. It is for this reason that the New England town maintains its position of importance in the local government system of the United States.

The Town Meeting.— It is not merely, however, because of its prominence as a local government unit that the New England town commands attention. In its organization and political characteristics it holds a unique place in our American polity, for it presents the sole instance of a direct democracy amid the representative types of government adopted by all of our other governmental units, national, state, and local. Legally speaking the town is the aggregate of the qualified electors thereof, and it functions through the direct action of these constituent members in town meeting assembled.

In colonial times there were different classes of dwellers within the towns, but all male inhabitants of legal age were entitled to share in the deliberations of the town meeting.[6] To-day, still, all persons recognized as qualified electors under the state laws are entitled to attend and participate in the town meetings. This means, broadly, adult suffrage, with a minimum residence in the local jurisdiction, subject to certain disqualifications, such as the receipt of poor relief, insanity, etc., and in two of the New England states subject also to a literacy requirement. The extension of the suffrage to women by the Nineteenth Amendment has, of course, doubled the electorate, but formerly women were admitted only to vote for school officers.

The calling of the town meetings is subjected to rather strict formalities, which are almost identical to-day with the early procedure in colonial times. The time for the annual meeting is fixed by law for the Spring in most of the New England states, the exact date being determined by action of the selectmen who issue warrants to the town constables to notify the townsmen and warn them to attend, though the earlier practice of calling at each house, has, of course, been superseded by more general means of publicity. In case of failure of the selectmen to act, citizens may appeal to the justices of the peace for the issuance of the necessary warrants. Return of such notice and warning must be made to the town clerk by the constables before the date of the meeting.

These warrants must, in order to be legally valid, state the time and place of the meeting, and also the business to be considered as prepared by the selectmen.[7] No other

[6] Property qualifications were established limiting the right to vote for certain officers. See, Howard, *op. cit.*, p. 62.

[7] For samples of such warrants calling town meetings see Fairlie, *op. cit.*, pp. 150 and 153, and Beard, *op. cit.*, p. 556.

business may be considered at the meeting except that enumerated in the warrant. At the annual meetings the most important business includes the election of town officers for the ensuing year, the hearing of and acting on the reports of the town officers and committees, the voting of appropriations, and the passage or amendment of by-laws. Special meetings may be called in the same manner during the year, but usually only two or three such meetings are summoned.

The place of meeting is regularly in the town hall, which is supposed to be located near the geographical center of the town. This may sometimes be in the principal village or settlement within the town, or it may be out in the open country, if there are several such settlements. Of the qualified voters entitled to attend usually not more than half are present, and frequently much less than that proportion. In the smaller towns the ratio of attendance seems to be higher than in the more urban towns, for in the former the annual town meeting retains its social and ceremonial aspects in connection with its political importance. As towns approach the status of real urban centers it frequently becomes difficult if not impossible to provide a meeting place large enough for all qualified voters. But so strong is the attachment of the New Englanders to this venerable institution that towns frequently continue their ancient form of direct democracy even when it has become practically unworkable. Boston, for instance, did not change from the town government to the city form of government until it had attained a population of forty thousand, with a voting strength of seven thousand. Brookline, Massachusetts, with a population in 1910 of nearly 28,000, must have contained about five thousand voters qualified to attend and participate in the town meeting.

The meeting is opened by the town clerk or one of the selectmen and the first order of business on the warrant is the selection of a moderator, or presiding officer. This position, which is considered as the highest honor the town can bestow,[8] is usually filled year after year by some prominent citizen, the position of secretary being filled by the town clerk. The next business is the election of the town officers, of whom there are a large number, some chosen for two- or three-year terms, but mostly for a single year. The polling, which is by secret ballot, frequently continues while other business of the meeting is being taken up. The business at the annual meeting may frequently require more than one day for its transaction.

In the smaller towns this primary assembly really functions as a direct democracy with actual participation by a considerable number of voters. In the larger towns, however, especially those approaching the stature of cities, the real work of the meeting is done by politicians or at best by a committee appointed by the moderator to make recommendations on the matters included in the warrant. In either case the active influence of the individual voter is more or less negligible, and the direct democratic character of the town government is largely modified. In the opinion of a competent observer, "the town meeting ceases to be a satisfactory organ of local government when the population of the town exceeds five or six thousand." [9]

Not merely the size of the population but its character also may work to undermine the traditionally satisfactory character of the New England town meeting as a local government organ. The development of manufacturing, bringing within a predominatingly rural town a con-

[8] Munro, *op. cit.*, p. 562.

[9] *Ibid.*, p. 563.

siderable industrial population, frequently of the foreign immigrant type, introduces a discordant note, while the increase in summer residents may threaten the control by the permanent residents of their town affairs, or at least gives rise to disputes.[10] Under such conditions the town meeting ceases to function properly and the town must either give up its cherished type of direct government for the representative type of city government, or content itself with the shell of the old scheme from which the spirit has largely departed. There is a strong tendency to do the latter, but an effort at compromise may be seen in the scheme of limited town meetings, so-called, under which the voters elect in precincts representatives to attend the town meeting. This is the scheme now in force in Brookline, Massachusetts, but, as has been pointed out by Professor William B. Munro, a town meeting must either be direct or representative, and if, as in Brookline, it is constituted on the representative principle, it has lost the distinguishing characteristic of the historical New England town meeting. There seems, therefore, no alternative in the growing towns of New England to the gradual abandonment of the old town meeting system wherever urban conditions develop.

Town Officers.— Another of the striking features of the New England town government, aside from its character as a direct democracy is the large number of officers provided. In a small New England town of two or three thousand population there may be a score or more officers, mostly elected at the town meeting, but in part appointed by the selectmen. Most of these officers are unpaid and the multiplicity of offices is necessary in order to permit citizens to perform these limited duties without undue interference with their private affairs. In the early days

[10] Hart, *Actual Government*, p. 171.

service as town officers was compulsory with penalties for failure to serve and practically every eligible inhabitant was called into service in some capacity or other in the course of time, and this is true even to-day in the smaller New England towns.

The Selectmen.— The most important of the town officers are the selectmen, called in Rhode Island from an early period the town council. The number of these selectmen varies from three to nine, chosen usually for a year at a time, though in Massachusetts quite frequently for three years with overlapping terms. The practice of choosing selectmen to carry on the business of the town between town meetings began at a very early date in the colonial towns, and their functions were more important then than they are now, for any business might be assigned to them by the town meeting, except the election of the more important officers, and they constantly performed most of the town business, though accountable to the meeting for their acts.[11] But subsequently their importance was diminished by the requirements that the more important functions be performed by the town meeting itself.

At present the selectmen have no legislative or financial powers and have largely lost their powers of appointment. On the administrative side they prepare the warrants for the town meetings, are responsible for the town property, lay out highways and drains, issue certain licenses, audit claims against the town and issue warrants for payment, and attend to the holding of elections, both state and local. They may also, and in some of the smaller towns do, function as assessors, health officers, and overseers of the poor, but in the more important towns there are special boards chosen for these latter functions

[11] Howard, *op. cit.*, pp. 74–88.

by the town meeting. In Rhode Island from early colonial times the town councils, corresponding to the selectmen in the other states, have exercised *quasi*-judicial functions in the probating of wills. Reëlection to the position of selectman is quite common, sometimes for a considerable number of years.

There is, therefore, no chief executive officer of the New England town, the board of selectmen acting jointly and sharing the more important administrative functions with a varying number of other independent boards and officers. In colonial times the constable was the constitutive officer of the town, but the position has now lost its old importance.

The Town Clerk.— The most important single officer is the town clerk, who is not infrequently the only town officer receiving a salary. He was in colonial times the American reproduction of the old vestry clerk, as the board of selectment were the American adaptation of the English parish vestry. He is elected, like most of the other officers, for the term of a year, but is usually reelected as long as he is satisfactory. The clerk, sometimes called the recorder in the early days, is the secretary of the town meetings, of the meetings of the board of selectmen, and has charge of local records. He is charged with the registration of births, marriages, and deaths, an ancient function dating back to the middle of the seventeenth century. He issues marriage licenses and in some of the states records deeds, mortgages, and other legal documents. He reports to the town meeting on local matters and to state authorities on the more general functions imposed upon him by state law.

The Town Treasurer.— Each town has also a treasurer who receives the state, county, and local taxes and the other moneys of the town. He turns over the county and

state moneys to the central officers and pays out the town moneys on orders approved by the selectmen. His accounts are submitted to the town meeting for examination and audit.

The Town Constable.— Another officer found in every town is the ancient one of the constable, of whom there were commonly two or more, who are the peace officers of the town. Their position is similar to that of the sheriff in the county, for aside from preserving the peace and arresting offenders they execute the warrants of the selectmen and of the justices of the peace. Like the sheriff in some states too, the constables may act as tax collectors. But the position of constable is relatively of much less importance now than in colonial times.

School Authorities.— In every town there is a separate school board or committee chosen by the town meeting, membership being open to women in some states. Usually the direct administration of the schools in the town is in the hands of this committee, including the building and care of schools, the appointment of teachers and the determination of the curriculum. Smaller school districts within the towns were formerly common and are even now found in a number of the Connecticut towns where there are locally elected trustees and district taxes, the town committee acting as a supervisory body. But the tendency has been away from this system and toward greater centralization in the management of schools, superintendents sometimes being chosen for several towns in common.[12] In none of the New England states, as has been seen, are there county school superintendents with supervisory powers over the local authorities, but there has been in the New England states as elsewhere, a gradual tendency toward supervision and control by state edu-

[12] Fairlie, *op. cit.*, p. 161.

cational authorities. Massachusetts was in fact one of the earliest of the colonies to require each town to establish schools, and the other colonies soon followed.

Miscellaneous Officers and Boards.— In addition to these officers regularly found in New England towns there are a number of others, some of which are usually found only in the more important towns, a number of which however, though of very secondary importance, are regularly found even in the smaller places. In the first group belong such officers as the overseers of the poor, assessors, and boards of health whose functions in the smaller towns are frequently performed by the selectmen. Poor relief may involve the management of a town almshouse or workhouse, though several towns may combine for this purpose, while the tendency already noted to centralize certain phases of charities, operates in New England also to reduce the relative importance of this phase of local administration by the towns. The assessment of property for local and state purposes is a function of the town selectmen, of which in the larger places, however, they are ordinarily relieved by the election of special assessors by the town meeting. The care of the public health may also be entrusted to special boards chosen by the town meeting, to relieve the selectmen of the burden of this responsibility, and the measure of state direction and control over this function of the town is also continually increasing.

Other special authorities found frequently in the more important towns include water boards, library boards, park boards, and, in Massachusetts, town planning boards. Special highway authorities are also found as a rule in large and small towns alike and their function as local officers is also being circumscribed by the growing devel-

opment of state aid and supervision in highway matters previously noted.

Justices of the peace are elected by the towns in four of the New England states, but they are not regarded as town officers, their judicial jurisdiction extending over the county. They do not perform local administrative functions, though in the three states where the justices are appointed by the state authorities they may perform marriages.

The extensive list of minor officers [13] found in New England towns is interesting chiefly because of their number, their insignificance, and their three hundred years of existence in this country. It is clear that this system of administration by unpaid, unskilled laymen can be satisfactory only so long as the insignificant size of the town requires no special fitness or undue amount of service. In the large towns, consequently, the practice of employing paid officials is becoming more common.

The New England town has an interesting and creditable history and in some respects is still as satisfactory a unit of local government as the United States can show. But with the increasing complexity of public functions and the closer interrelation of localities with each other and with the state, it would seem to be rather too insignificant an area for effective local administration unless it has attained the size and importance of a city. Its advantage over the county as an area of rural administration in New England, lies chiefly in the fact that it is a historical division with community feeling and traditions, but many of its most important functions in the future such as po-

[13] Among which may be mentioned poundkeepers, fence viewers, sealers of weights and measures, inspectors and weighers of various kinds, fish wardens, and hog-reeves.

lice protection, public health, poor relief, education, water supply, sewage disposal, etc., will have to be administered in larger areas. Possibly a transfer of local government powers to the counties or to even larger divisions constructed on the principle of a federation of towns might be accomplished that would provide a more effective area of local government and yet preserve the advantages of groups possessing community feeling and homogeneity.

Central and Middle Western Townships

It will be remembered that in the great central colonies, New York and Pennsylvania, there was found a combination of the features of local government exhibited by the New England colonies on the one hand and the Southern colonies on the other. Towns in New York, as has been seen, antedated counties, as in New England, while in Pennsylvania counties were the earlier units to be established. But in both of these states the town played a more important part than in the South, while some of the important functions entrusted to the New England town were in the central colonies turned over to the counties. Thus arose the so-called county-township system which served as the model for the states erected out of the Northwest Territory, for the Northern states immediately west of the Mississippi, and in some measure for the states to the west of these. Also it will be remembered that New York and Pennsylvania represented the prototypes of the two main classes within the county-township system, namely the "commissioner type" and the "supervisor type," the characteristics of which have already been discussed.[14]

In the older states of this group the townships or towns, as they were at first indiscriminately called, were consti-

[14] See *supra*, Chap. ii.

tuted much like the New England towns out of irregular areas comprising considerable rural territory, and that is characteristic of these townships to-day. But in the states of the Northwest Territory and the later Western states the civil townships were commonly based on the areas of the congressional townships of approximately six miles square surveyed under authority of the Ordinance of 1785. In spite of numerous exceptions this may be regarded as the typical township from the point of view of shape and area in the Middle Western group of states.

Township government in this great group of states has been divided by one recognized authority,[15] into three classes, measured from the point of view of its state of development. The first class is represented by the type originating in Pennsylvania, influenced there to some extent, by the same forces that moulded the Southern type of local government, and adopted by such states as Ohio, Indiana, Iowa, Kansas, and Missouri. This illustrates the least developed type in which the people of the townships possess indeed the essentials of local self-government, but have no deliberative primary assembly corresponding to the New England town meeting, and no representation as members of the township on the county board. The next class, represented by such states as Minnesota and the Dakotas is characterized also by the lack of representation on the county board, but is differentiated from the first class by the institution of the annual town meeting possessing elective, limited local legislative powers. The third group, adopting the so-called New York plan, represents the development of the township in its most complete form in which there is not only the institution of the town meeting but also representa-

[15] Howard, *op. cit.*

tion on the county board which is made up of the supervisors of the townships within the county.

There are several striking features to be noted in this development of the townships as subordinate divisions of the county. In the first place attention may be called to the parallel westward movement of the differing New York and Pennsylvania types, due, of course, primarily to the similar westward trend of the emigrants from the older states who carried with them their attachment to the local institutions with which they were familiar. Closely connected with this is the second striking fact, namely that while each state was absolutely free to adopt its own local institutions, there is such a great similarity, in spite of infinite minor variations, in the system of the various states that followed one or the other of the two main original types. An illustration of the general acceptance of recognized types may be found in the fact that in a number of the central Western states we find the constitutions authorizing the adoption of "township organization" for counties without any further explanation, assuming, of course, that the type of local government designated by that term is indicated with sufficient clearness thereby. Thirdly, and also related to a fact brought out in the first mentioned feature, within individual states we find one of the two main types succeeding the other or existing side by side with it, as a result of the successive influence of immigrants from different sections of the country. An illustration of the first condition may be seen in Michigan where at first the strong county system was found, followed later by the establishment of townships and town meetings and the substitution of a county board of supervisors in place of the small boards of county commissioners. These later developments seem to be definitely traceable to the influence of the later immigration which

was largely from New England and New York where the town or township occupied a more important position. An illustration of the second situation where both types of county organization are to be found within a state, owing to the strong traditions of different portions of the settlers, is furnished by Illinois, where the original Southern, strong county organization was preferred by the immigrants from the South who bulked large among the early settlers, while the later influx of Easterners succeeded after a bitter fight in incorporating into the constitution of 1848 a provision allowing any county to adopt the township organization, with the result that the latter form has almost completely supplanted the earlier type. The same development occurred in Missouri for similar reasons, where, however, relatively few of the counties have adopted the township organization. On the other hand, in Nebraska, where the optional plan also prevails, the consideration of sources of population seems to have little importance, the desire for the township system being apparently due to economic considerations. Finally it is to be noted that in Minnesota and Dakota Territory congressional townships within the counties with a minimum number of voters were given the right to adopt the township laws, though Minnesota and South Dakota now have the township system while North Dakota has the optional system under its constitution.

Townships in the territory now under consideration are, like the New England towns, essentially rural in nature. But the greatest variations exist not merely in the number of inhabitants but in the character of their population when classified as urban and rural. This is due in large part to the variations that exist in the different states as to whether the incorporated urban communities, cities, boroughs, and villages are or are not included within the

township for governmental purposes. Cities are generally separated off from the townships in which they lay before incorporation, though in an important group of states, including Illinois and Indiana, all incorporated communities, including cities, remain within the township. As a result, in these states there are townships with populations running into the thousands, or in one or two instances even into the hundreds of thousands. In other states, as in Pennsylvania, for instance, the boroughs are also quite independent of the townships, while in still others incorporated villages as well are distinct from the counties in which they lie.

Even, however, when the incorporated urban communities are not separated from the townships, it is true in all the states that these specially incorporated places, of which there are thousands, perform within their limits by means of their own officers many of the more important local governmental functions. As compared with the New England town, therefore, which, as has been seen, normally includes all territory both urban and rural that has not been specially incorporated as a city, the townships for the most part suffer a curtailment of their functions from within, while, owing to the greater importance accorded to the county as an agency of local rural administration, the townships are more restricted in the other direction than the New England town. This results, of course, in the township constituting in general a much less important area of local government in the states operating under this system than the town in New England.

Townships are local public corporations by legislative grant with the usual corporate powers, as to suing and being sued as corporations, the acquisition, holding, and disposal of property, the making of contracts in the execution of their legal powers, etc. They have not, however,

any inherent or inalienable powers, though in a number of states there are constitutional restrictions prohibiting local or special legislation for the incorporation of townships, the alteration of their boundaries, or the determination of their powers. But the extent of legal legislative powers and the scope of undertakings for which they are authorized to levy taxes are in general so limited that they are to be regarded as *quasi*-corporations rather than municipal corporations.[16] On the other hand the townships are charged by the state with the performance of central functions such as the assessment and collection of taxes for the counties and the state, serving as election districts for state and county officers, and the petty administration of justice.

The insignificance of the township as a local government area in Illinois, where, as has been seen, there was a determined fight waged for its establishment, may be seen from the conclusions of a recent investigation made in that state.[17]

> Towns in Illinois have very limited powers. They are vested with corporate capacity, and may levy local taxes and make by-laws for a few enumerated purposes. . . . They also elect a considerable number of officials for road and judicial administration and for the assessment and collection of taxes. But the matters which form the important business of New England towns are in Illinois looked after by the cities, villages, and school districts. . . . Town finances are of very slight importance. The road and bridge tax is separately administered; and the general town levy is usually not more than two or three per cent of the total taxes, and averages less than six cents on the $100 of taxable value. The principal expenditures are for

[16] For the accepted distinction between these two terms see *supra*, pp. 187 ff.

[17] See Fairlie, "County and Town Government in Illinois," *Annals of the American Academy of Political and Social Science*, May, 1913, pp. 70 ff.

the assessment of property for taxation and the compensation of town officers.

In other states the township has even more limited functions, as in New York, for instance, where even the town taxes are levied by the county board.

The Town Meeting.— On the organization side the township system in the states under consideration may be classified, in the first place, on the basis of the existence or non-existence of the town meeting. The states in which the town meeting is found are those, as has been pointed out, in which the settlers were principally from New York and the New England states.[18] But while the establishment of the institution of the town meeting in these states illustrates the influence of governmental traditions, the actual character of the town meeting as found in them demonstrates, on the other hand, how a governmental institution transplanted into different political, social, and economic conditions will inevitably display variations from the original, due to the altered conditions. So the original idea of the part the town meeting should play in these Western townships was probably based on the New England town meeting, though in New York as has been seen, town government was, even in colonial days, representative rather than direct, in spite of the existence of town meetings. But the town meeting of the Western states for the most part seems to show a distinctly less vigorous existence than in New England, as evidenced by the remarkably small attendance at town meetings in most of these states, compared with the situation in New England, a mere handful of voters often constituting the whole attendance out of voting populations running into the hundreds or even into the thousands, while in a con-

[18] Michigan, Illinois, Wisconsin, Minnesota, Nebraska, and the Dakotas.

siderable number of the townships no town meeting is held, although established by law. To illustrate again from the investigation of conditions in Illinois already cited,[19] ". . . Less than a third of these (*i. e.* of the towns answering inquiries as to the attendance at town meetings in 1912) reported an attendance of more than fifty at the business meeting; and only thirty-nine towns reported an attendance of more than a hundred. In towns, including cities of some size, the town meeting is of even less importance than in rural towns; it is seldom attended by more than a handful of voters, and in some places no meeting at all is held. Nearly three-fourths of the county officers who replied to inquiries as to the value of town meetings reported that they were no longer of substantial service. . . . Many urged the abolition of the town meeting."

Similar conditions are reported from other states, although in some states the town meeting seems to be more vigorous as a rule and in individual towns in Illinois greater interest is shown in the town meetings. But in view of the apparent decadence of the town meeting, as shown in the experience of various states, one can hardly subscribe to the opinion of an early student of the township in the Western states that the county-township system based on the dual principles of the town meeting and the county board composed of representatives of the towns, " seems to be one of the most perfect products of the English mind and worthy to become. . . . the prevailing type in the United States." [20]

In the other states of the section here under consideration, those influenced by the Pennsylvania model, the town-

[19] Fairlie, "County and Town Government in Illinois," etc., pp. 71, 72.

[20] Howard, *op. cit.*, p. 158.

ship is found, it is true, but not the town meeting. This is not surprising, however, since town meetings were originally not provided for in Pennsylvania at the time when towns were established.

The reasons for the relative debility of the town meeting in the central West are not hard to find. In the first place, the Western township was an arbitrary area based on a rectangular survey having no homogeneity or geographic or social interests, and there were no forces at work to create a community feeling. It has been seen how the success of the New England town meeting as an instrument of government is being endangered in spite of its three centuries of history, by the introduction of new and conflicting elements in the population. The Western township, lacking the historical traditions, suffered from the outset from the disintegrating forces arising from unrelated and oftimes conflicting economic interests of the growing population, while the addition of elements in the population unacquainted with the instruments of direct democracy contributed in a correspondingly stronger degree in the West than in New England to the decay of the town meeting. In all of these Western states, furthermore, as urban and semi-urban communities developed within the township their special needs were given recognition by their special incorporation as cities and villages, distinct, as has been seen, in general from the original township, or in any case performing for themselves many of the functions which in New England constituted the major portion of the town-meeting business. With virtually no business of importance to transact, the town meeting ceased to attract attendance, until the township officers frequently were the only persons enough concerned to appear, with the result that while the form of the town meeting remained, the substance largely departed.

Under these circumstances, therefore, it would seem better to abandon the empty form and adopt a frankly representative type of government, if indeed the township performs any useful function at all under present day conditions.[21]

Township Officers.— From the point of view of the administrative organization of the township, two pretty distinct types again may be noted in the states under consideration. In some states the chief administrative authority is a committee or board, not unlike the New England board of selectmen, though in most of them this is a relatively more important body than the latter because this type of organization is more generally found in the states that do not have the town meeting. On the other hand in states like New York, Michigan, and Wisconsin, where the town meeting exists, there is a chief administrative officer known as the supervisor, or chairman, an official whose absence in the New England town has been remarked above. In the states where the supervisor system of county organization has been adopted, this official acquires added importance because he is the representative of the township on the county board. But even in the states operating under the commissioner system in which the townships as such are not represented, as in Indiana, the township trustee, as he is there called, is a distinctly outstanding official. But in addition there is also a township board.

The duties of the township supervisors, chairmen, or trustees, are so varied in the different states as to defy detailed and separate enumeration. But quite generally they are the legal representatives of the township, are responsible for township property and usually administer the finances of the township. Other administrative duties

[21] See below, p. 282.

are frequently imposed upon them such as the assessment of property for taxation, and the care of the poor.

The township board in the townships possessing such a chief administrative officer are commonly composed of this officer and the other township officers, but in those townships for which no chief administrative officer is established, the board as a rule is composed of elective officials distinct from the other county officers. In some states they are called supervisors, without being members of the county board, however.

The powers of these boards vary as much as those of the chief officers, but one general function seems to be to audit the accounts of the township officers and to authorize the payment of funds from the treasury. Not infrequently, however, these boards are the real governing body, even where, as in New York, a town meeting is provided for. And where there is no chief administrative officer, these boards may unite almost all township functions, legislative, financial, and administrative in their own hands.

Other township officers frequently found include the township clerk, township assessors, treasurers, overseers of the poor, and others. These officers are elected and receive salaries and the large number of minor unpaid posts found in the New England towns are not duplicated here.

In the assessment of property the township is frequently subject to control by county authorities, while poor relief is usually a county function. Public health has been made a township function in various states, but road construction and repair are frequently entrusted to officers elected for road districts within the county.

Two or more justices of the peace are elected by the townships throughout these states but while they com-

monly act only for the townships in which they are elected, legally their jurisdiction extends through the county. This system is subject to grave abuses [22] and has led to their jurisdiction being limited to their townships in some states. The only connection, however, between the justices of the peace and the administration of local township affairs is to be found in a few states like New York and Illinois, where they are members of the town boards. This is about the only survival, however, in the central group of states of the former administrative attributes of the justices of the peace.

Finally, there are two or more constables in each township who act as conservators of the peace and as executive officers of the justice courts, occupying much the same position as the constables in New England towns.

Township Functions.— One of the ancient functions of the New England town and one in which there has always been a great deal of popular interest manifested in the United States, has not been entrusted in the states having township organization to the townships as such. That function is the local administration of the public schools. Public elementary education in these states is in the care of special school districts, which are constituted as special corporations, with their own voters, usually including women even before 1920 — as was true, it will be remembered, of the participation of voters in school matters in New England electing their own officers, and having their own taxing powers. Here we find a recurrence of the idea of the primary assembly in the school meetings, which are found not only in the states having town meetings but also in some of those not adopting the primary meeting for the management of town affairs.

Although these school districts are legally distinct

[22] See Baldwin, *The American Judiciary*, pp. 129–131.

bodies from the townships they usually stand in a rather definite geographical relation to the latter. Thus they are usually identical in area with or are subdivisions of the township. This similarity of geographical extent is the result of historical development. It has been pointed out that in a number of the Middle Western states the Federal Government insisted on the continuation of the practice of setting aside a section of land within each congressional township for free public-school purposes by the states on admission to statehood. Thus before there were townships for other local government purposes, the congressional township, which was in large part the direct antecedent of the civil township, had been indicated as an area of school administration. Thus in some of the states, Illinois for instance, the township was a body politic and corporate for school purposes before it was established for any other governmental purposes. When later these congressional townships were made election districts, justices and constable districts, road districts and poor-relief districts, the identity of area was established. But the legally distinct character of the school district was maintained, and when the population began to require schools but was not sufficiently dense to make the whole township a single school district, smaller areas within the township were created for school purposes. With the increase in population, however, and the fuller development of educational ideas which would naturally point to larger areas of school administration as desirable, the smaller districts were still retained.

It seems clear, as has been pointed out before, that petty school districts with few pupils and a teacher or two are ineffective and wasteful, and that except in the incorporated urban communities the area of administration should be larger than the insignificant rural districts still

found in a number of these states. With the development of passable roads it is very generally recognized that larger districts, even though necessitating public transportation facilities for pupils, are in every way preferable to the feeble, little school districts formerly so common. Accordingly within recent years there has been a tendency towards consolidation of districts and uniting all the rural area of the township in one district. Where that is done there would seem to be no good reason for having a township school corporation distinct from the ordinary township government. But it seems at least doubtful whether even the township represents a sufficiently extensive area for purposes of school administration. The centralizing tendencies in state educational administration would seem to call for a good deal more consolidation than is possible under such a system, and expert opinion among educators seems to point to the conclusion that the county should take the place of the township in these states as the primary unit of local school administration.[23]

School districts are not, however, the only special local districts to be found within or cutting into the townships, aside from cities, villages, and boroughs. Drainage districts, levee districts, and other improvement districts of various kinds are to be found in various states, still further diminishing the importance of the township. This tendency to create special districts is due partly to the fact that the geometrical boundaries of the townships do not correspond to the areas in which special needs develop, and partly also to the fact that the extremely limited financial and administrative powers of these areas do not permit of new and costly undertakings. But the multiplication of local governmental agencies with independent taxing

[23] See Cubberly and Elliott, *State and County School Administration.*

power is resulting in introducing worse confusion into our already unmanageable system. We are repeating in this country the experience of England during the most of the nineteenth century when the multiplication and confusion of local areas became so fearful that even the traditional British aversion to radical and sweeping alteration broke down before the need of simplification, and resulted in the reforms of 1888 and 1894. A striking example of the situation which may develop as a result of this tendency to multiply special areas instead of centralizing powers and duties in a single organization is furnished by the situation in Cook County and Chicago, Illinois. Within the city of Chicago there are no less than thirty-eight distinct local governments, while in the county as a whole there are 393 separate agencies of local government.[24] This is, of course, an extreme case, but many of the factors that contributed to the hopelessly muddled situation there are at work to bring about similar results elsewhere, not merely in the group of states immediately under consideration here, but in all parts of the country.

We are justified, therefore, in touching briefly here upon the question of whether the township as it has been described above, fills any essential place in a proper scheme of local government at all, or whether it would not be better to abolish it entirely and adopt areas more fitted to the local governmental needs of the states. The main functions of the townships at present, bearing in mind the fact that local urban needs are generally met by municipal corporations largely distinct from the townships, are the original rural activities of poor relief, and highways, in addition to functions of a distinctly central character

[24] See Bulletin No. 11, "Local Governments in Chicago and Cook County," prepared by the Illinois Legislative Reference Bureau for the Constitutional Convention.

such as justice, the assessment of taxes, and the conduct of elections. Education, as has been seen, is not a function of the civil townships as such anyway in these states. Now these are all functions which are not really suitable for local administration in these areas at all, even if a satisfactory system of state administrative control should be developed. Poor relief, aside from the temporary non-institutional cases, can manifestly not be carried on in any such insignificant area as is the township from the point of view of population and resources, since, as has been seen, experience is proving that even the average county is not adapted to the provision and maintenance of special institutions for the various classes of public dependents. Highway problems are in the same degree manifestly not primarily the problems of restricted rural areas of some thirty odd square miles, but are increasingly matters of state and even national concern. The county, as has been pointed out, cannot be left to neglect the management of the main arteries of traffic that run through it, but must be forced to contribute to their proper construction and maintenance with the aid and under the direction of the state highway authorities, if the larger interests of the state are not to suffer. In a like manner the secondary roads within the county cannot be left to the mercies of particularistic and impotent divisions, like the petty road districts, without the greatest loss of efficiency and increase of expense. Public health, in a similar manner, requires expensive personnel and equipment for its efficient protection, and a larger area demanding full-time, professional administrators will obviously be better taken care of than a limited area in which the system of part-time officials will inevitably be adopted. Similarly as an area of assessment for taxes the township has demonstrated its incapacity.

Not only, therefore, do we find that the township is as a matter of fact a governmental area that deals with so few matters as to furnish insufficient basis for popular interest, resulting in even those few matters being imperfectly or corruptly managed, but also we may conclude that the township is in its very nature not adapted to the proper performance of the functions it now possesses or that might be conferred upon it. The solution, therefore, would seem to lie in the abolition of the township in these states as a unit of local government, and the distribution of its existing functions, including the administration of schools which is carried on by the school districts in or of the townships, between the urban municipalities on the one hand and the county or other larger areas on the other.

County Divisions in the Southern and Western States

County Subdivisions in the South.— Towns in New England preceded the counties and continued to perform functions of local government after the counties were superimposed upon them. Townships were established in the central and middle western states after the establishment of counties, partly as a result of the governmental traditions of the settlers, partly in consequence of the division of the land into congressional townships by act of the Continental Congress, and partly because conditions in the newer states somewhat similar to those originally found in the central states of the Atlantic seaboard seemed to call for like local institutions. But in the Southern states, the parish, principally an ecclesiastical division and never of great importance as a local government unit, did not survive the introduction of the county system of administration, which was more suited to the

economic, social, and political conditions of that part of the country.

Nor did the subsequent political and social development of that section require any departure from the original system in which the county was the primary unit of local administration. With the creation of urban communities, these were commonly incorporated as villages, towns, or cities, as occurred in the other states, but the characteristics of the rural areas were not greatly altered during the nineteenth century. Population, that is especially the voting population, remained sparse, for it was never within the mind of the lawmakers and controlling forces in those states that the negroes who constituted the bulk of the rural population in a number of the states should be admitted to political participation, the Fifteenth Amendment to the contrary notwithstanding. Land continued to be held in large tracts, and those tenant farmers who were not negroes were as a rule more or less transitory, frequently ignorant, generally indifferent on political matters, and sometimes under the political domination of their landlords.

There was, therefore, nothing to call for the introduction of rural areas of local government smaller than the county, and the attempt already noted of some of the reconstruction governments to introduce the Northern township system into the Southern states would probably have failed even without the bitter antagonism that was created in the South towards all Yankee institutions and ideas by the experiences of the Reconstruction Period.

But while subdivisions of the county corresponding to the New England town or the New York township did not find a place in the South, counties were divided for administrative and political convenience into lesser areas. The more important of these appear under a variety of

names such as magisterial districts in Virginia, supervisors' districts in Mississippi, wards in Louisiana, commissioners' precincts in Texas, militia districts in Georgia, hundreds in Delaware, and quite commonly election precincts or districts. As these divisions have either no local administrative powers of their own at all, or have them to a very limited extent only, they commonly include the incorporated villages, towns, and cities within their geographical boundaries. In Virginia, however, where, as has been seen, the cities are distinct from the counties even, they are not within any magisterial districts, while New Orleans and a few other cities in other states are likewise excluded.

In most of the Southern states these districts are election and judicial districts purely, though in a few instances they are also road districts. They are of the most importance in Virginia, but even there do not approach the northern town or township in organization or functions. Justices of the peace are commonly elected in these districts, and in the states where the justices are still members of the county board,[25] they constitute local officers of some importance. Generally, however, the justices of the peace occupy much the same position in the South that they do in the North. In one or two states they are still appointed by the Governor.

Special districts with local taxing powers are found in the Southern states as well as in the North, sometimes with their own elective officers but more commonly using at least some of the county officers. These comprise such districts as drainage districts, health districts, road districts, levee districts, etc., and may cut across county lines as well as across the lines of the election and judicial districts already noted.

[25] Kentucky, Tennessee, and Arkansas.

For school purposes the Southern states had not convenient areas like the New England towns or the Middle Western townships, and the counties were for the most part unsuited as areas of school administration also. In fact the provision of free public schools in the Southern states lagged behind those provided in the North, partly because the school population was for a long time very sparse, the landowners sending their children to private schools or educating them at home, and the negroes not being regarded as having any claim to free public education. Partly, also, the cost of public schools proved a considerable financial burden. With the growth of rural population, however, special school districts were provided within the counties, but with the exception of the incorporated urban areas, these were more closely united with the county organization than in the North. Then, too, as the obligation to provide free schools for the negroes came to be recognized, the importance of school administration increased. But the inefficient and wasteful character of school administration by petty one-school, and sometimes one-teacher districts, made itself felt in the South as elsewhere, and the traditional plan of recognizing the county as the chief administrative subdivision tended to make the decentralization less complete there. As has already been pointed out, the introduction and extension of state administrative control over education, has become a factor of recent years in the Southern states also. Incorporated cities, towns, and villages are commonly constituted independent school districts, though in some instances even city schools are united with the rural schools under one county administrative authority.

If it is true, as has been suggested, that the New England town and the central western township are filling a place of diminishing value as local government areas, it

is extremely unlikely that a corresponding subdivision will develop in the South where neither historical traditions nor geographical, economic, and social conditions are favorable to such development. Truly urban problems will continue to be met by the incorporation of urban areas, and the problems of rural government that are left must either be entrusted to the county, which in the older Southern states at least, has some traditions back of it and elements of local patriotism and pride, or to an even larger unit which will be financially able to support more intensive and effective administration, while at the same time being of sufficient geographical extent to control the conditions affecting the safety, health, and welfare of the inhabitants.

County Subdivisions in the West.— In the West also conditions were not favorable to the development of the town or township system. It is true that in all of the states of the West, township organization is contemplated or prescribed by the constitutions.[26] In four of these states the constitutional provisions regarding the establishment by the legislature of township organization are repetitions of the Illinois provision permitting local county option on the adoption of township organization, while in other states, Nevada for instance, the provision is mandatory in form that the legislature shall establish a system of county and township government which shall be uniform throughout the state.

But these provisions, the incorporation of which into the constitutions was undoubtedly due, in part at least, to the influence of the settlers who had a previous acquaintance with such a system, did not suffice to bring into ac-

[26] California, XI, 4; Colorado, XIV, 12; Idaho, XVIII, 6; Montana, XVI, 6; Nevada, IV, 25; Oregon, VI, 8; Utah, XI, 4; Washington, XI, 4; Wyoming, XII, 4.

tual being the township of the Middle West, because of the differing conditions. In the first place, just as the isolated and scattered nature of the early farming population of the states in the Northwest Territory differed fundamentally from the characteristic mode of settlement in group communities in New England and was unfavorable to the development of as strong a township government, so in many of the Far Western states, where the occupation of the early settlers was cattle raising instead of farming, a form of occupation dictated in large part by the character of the land itself as well as by its remoteness and requiring much larger tracts of land and so an even more scattered population, the township as existing in the Middle Western states was not a practicable unit of local rural government. In those states the county inevitably became not only the chief but in many cases the only unit of local government, until urban settlements began to develop. In other states, where early settlement was the result of the discovery of gold and other minerals, population was almost wholly gathered in the mining camps which immediately partook of the nature of urban units, the rural territory having in many states almost no population at the time of their admission to statehood. Although greatly modified by the subsequent influx of agricultural populations, the situation is still very much the same to-day, and with the practice of incorporating the smallest compact settlements there really developed neither a need for nor a possibility of a system of rural government based on smaller units than the county. The latter, as has been seen, has been continually reduced in area as the population increased, for even the average sized county as existing in the older states comprised too small a population for many years in these sparsely settled states to be organized as a governmental area.

Thus, while the township exists by law in some of these states, it is geographically a much larger area than the Middle Western township and in its character approaches much more the districts or precincts found in the South. These districts are principally judicial, election, road, or school districts. Justices of the peace and constables are elected in the townships or precincts and election officers are usually found for the same areas.

The county board itself commonly has the power to create school and road districts. The former usually have their own elected boards which in some states have their own taxing power, though even that is sometimes exercised by the county boards. In the same way road districts are usually under the supervision of members of the county board, with district overseers appointed by the same body, though in a few cases elected, the tendency apparently being in the latter direction.

There are also found some other special districts in these Western states, such as irrigation districts. The incorporated urban communities commonly remain parts of the townships or precincts, although performing their local functions independently.

Throughout this region, therefore, conditions do not point to the development of the township as a vital unit of local government, even with the increase in density and change in character of the later population.

Semi-Urban Subdivisions of Counties

In the discussion of the county subdivisions so far, attention has been devoted to the typically rural areas. It is true, as has been pointed out, that frequently the New England towns and in some cases the Middle Western townships attain a semi-urban or even urban character. But even those types of county subdivisions are pre-

dominatingly rural, while the county districts in the rest of the United States are virtually wholly so. It was also pointed out that in every part of the country, with the exception of New England, compact communities within the counties are almost always authorized to organize as special corporations, and that this tendency is manifest not only in the Middle Western states where township government is generally provided, but even in recent times to an increasing extent in New England.

These communities are distinguishable on the one hand from the class of county divisions so far considered by the fact that they are created to satisfy the needs of a greater or less number of persons living within a relatively restricted area. On the other hand they are distinguishable from the larger urban areas commonly designated as cities by their smaller size, and a correspondingly more limited range of functions and less complicated organization.

Generally these semi-urban divisions are known as villages, boroughs, or towns. But the name given them is no criterion of their real nature, for so-called towns, villages, or boroughs may vary in population from a hundred inhabitants to ten or fifteen thousand or more, while the term city is applicable in some states to communities of two thousand, or less. Perhaps five thousand may be taken as a fair average figure at which these communities leave the semi-urban class and enter the class commonly known as cities. But for purposes of discussion it may be better to adopt the classification of the United States Census which regards all places of 2,500 inhabitants or more as urban, and all districts of less than 2,500 as rural.

According to the Census of 1910 there were 14,576 incorporated places in all. Of these 11,784, or more than 71 per cent, were incorporated places of less than 2,500 in-

habitants, which comprised the vast majority of the semi-urban subdivisions we are now considering. The number of these small corporations increased in the decade from 1900 to 1910 by nearly three thousand and in the previous decade by more than twenty-four hundred, making a total increase since 1890 of 5,318, while the number of places of more than 2,500 showed an increase of only 895 in the same period. But the total population of the semi-urban communities amounted in 1910 to only a little over eight million, making an average population for these places of less than 700.

We have already seen in a previous chapter that while there were no urban communities incorporated in New England during the colonial period, the town government being considered suitable to care for the needs of the more compact communities as well as of the strictly rural portions of their territorial extent, small urban communities were incorporated in a number of the other colonies under the name of boroughs or cities even prior to the Revolution. The term borough was retained in some of these states for the smaller communities, while in others the term village was used, the designation city usually being applied after the Revolution to the more important corporations. With the establishment of settlements in the Western states the term town came into use to designate these smaller urban places, and sometimes both village and town were employed in the same state, villages designating the smallest units separately incorporated, while towns represented a more important area classified between the village and the city, corresponding to boroughs in New York and Pennsylvania.

The remarkable increase in the number of these small municipalities was undoubtedly due, in the Middle Western and Middle Atlantic states, to the artificial nature

and relatively feeble character of the township, while in the South and the West it was necessitated by the absence of any local government unit smaller than the county. In New England the noticeable development of such corporations has been very recent, the ancient town government being regarded as adequate until conditions require the incorporation of large urban communities as cities.

One characteristic of these newer urban corporations as compared with the older towns and townships is that the former are incorporated by voluntary acts of the inhabitants, while the latter were not only originally not regarded as corporations at all but even after the corporate capacity was conferred upon them their organization was quite commonly brought about by a general law applying to all existing or proposed divisions without reference to local desires. This distinction, however, which as has been seen elsewhere, has generally been regarded as marking the dividing line between municipal corporations and *quasi*-corporations, is no longer strictly adhered to. In the states in which the question of township organization was to be decided by vote of the county, there was, of course, a measure of local desire presupposed, but only in one or two instances did the state laws leave it to the decisions of the inhabitants of parts of counties to decide when they wanted to be organized as townships.

The common method for the incorporation of these semi-urban communities is by petition of a certain number of the voters of an area which has the requisite population, to the county judicial or administrative authorities. Usually an affirmative majority vote is then required, for completion of the project, though in some instances the county authorities may grant the petition

for organization as a corporate town or village without such vote. Not infrequently, too, in order to insure compactness of population as well as attainment of a given minimum, the law specifies that the population which it is intended to include within a new corporation must be contained in a definitely limited area, such as a square mile.

In more than one-half of the states, there are constitutional provisions requiring the incorporation of towns to be regulated by general law, strengthened in a number of the states by express prohibitions on special or local laws for the incorporation of towns. But nine state constitutions expressly permit classification of towns on the basis of population, only one of these [27] fixing the population limits for each class. In the other states, under the prevailing judicial opinions, classification can be resorted to in spite of the prohibition of special laws, which when carried to extremes may nullify the prohibitions of the constitution.

The corporate character of these subdivisions involves not only the usual corporate attributes of suability, acquiring, holding, and disposing of property, perpetual succession, etc., and the further powers of taxation, and borrowing money for corporate purposes, but also generally a local ordinance power for the preservation of public safety, health, and morals, and to a greater extent than is true of the townships, or even counties, the power to undertake public utilities. Generally speaking, the extent of the functions performed by these incorporated villages and towns varies inversely with the importance of the larger county subdivisions, being least extensive in New England and most important in the South and West. A very common constitutional limita-

[27] Kentucky.

tion upon the powers which the legislature may grant to the corporations in question is that prohibiting the town from subscribing to or becoming a shareholder in corporations, or appropriating or loaning any public moneys to such private undertakings. Furthermore, there are constitutional limitations in most states both on the amount of taxes that can be levied, usually described as so much per hundred dollars of taxable value, and on the total amount of indebtedness to be incurred, commonly designated as a certain per cent of the assessed property valuations. Of course, in accordance with the general principles of the law of municipal corporations in the United States, villages and towns may only levy taxes of a kind and to an amount, or borrow money to an extent specified by law.

Villages and towns are commonly organized with an elective council or board of trustees, holding office for short terms, usually one or two years. These councils or boards are the financial and legislative authorities of the villages and towns, and in many instances exercise important administrative powers also, such as the control of the property, the creation of minor offices, and the appointment of their incumbents, though certain of the local officers, notably the principal officer, are frequently established by law and chosen by popular election.

On the organization side one of the characteristics of these corporations, as compared with the other county divisions, is the very general existence of a chief officer. In a number of the states he is called the mayor, in imitation of the chief officer in cities. But other titles are also found, the commonest one being president. This officer is elected by popular vote and though in many cases he is not accorded by law any position of legal superiority he is recognized as the most important per-

sonage and his influence is likely to be greater than that of the members of the council or board. It is true that in some states there is only a chairman of the board, chosen by the board itself and not assuming the importance of an executive head, but the tendency is rather to accord to the village president or town mayor a position approaching that of the city executives with a veto power, a general police responsibility, and administrative supervision and direction over the other officers.

These small corporations usually have their own constables and justices of the peace. There is always a recording officer or clerk and a financial officer to collect and disburse the moneys. Even assessors may be found among the village and town officers, though commonly the county or township assessors function in that capacity. These officers, and others that are required by law in some states are frequently elective, though generally appointed by the council or board. Naturally the number of officers required will vary with the population, and a special law, or laws for classes of towns according to population, make provisions for additional officers in the larger communities, but sometimes the minimum machinery required is cumbersome for the smallest of these corporations.

These semi-urban areas are frequently established as independent school districts, in which case there are school boards required, as a rule chosen by popular vote.

But the corporate affairs of the villages and towns as school districts are generally distinct from the other local concerns. This tendency to make education a branch of administration wholly independent of and in large measure unrelated to the general administrative organization, runs through the entire American scheme of government, state and local. It is reflected in the popularly

elected state superintendent, in the independently elected county boards and superintendents, in the system of petty school districts with their own machinery, in these semi-urban local corporations, and, as will be seen, in the cities as well. It may be called, therefore, the traditional American type of school administration. As to its theoretical soundness and practical aspects something will be said at a later place. It may be remarked, here, however, that public-school administrators and trained educators seem to be pretty generally convinced of its wisdom. At the same time, it may be permissible to suggest at this point that the objective value of this conviction may be somewhat impaired by the very intimate relation in which the judges stand to the system itself.

Summary and Conclusions as to County Divisions. — Surveying the situation that exists in the United States as a whole with regard to the subdivisions of counties, we find first, that where rural subdivisions with somewhat general powers of local government exist, they are historical continuations or perpetuations of ancient institutions, as in New England and the central states. In the second place, where historical and traditional influences did not operate to call such agencies of rural local government within the county into existence they have not been created. In the third place, the long established rural town and township government of New England and the central and Middle Western states have been and are being undermined by the development of urban and semi-urban communities within their limits which seem to demand a separate corporate existence, leaving the functions of these traditional units of decreasing importance and public interest. In the fourth place, in every part of the

country, though less in New England than elsewhere, even the smallest compact settlements have been accorded by separate establishment as local corporations, a recognition of individual local problems which neither the general rural subdivisions of the county where they existed, nor the county itself where there are no such divisions, were regarded as competent to handle. And, finally, that in addition to these authorities for general local governmental purposes, an increasing number of special districts have been created as local corporations for particular purposes, such as road building, school administration, health administration, fire protection, and the provision of public services such as water supply, drainage, sewerage, irrigation, and other public improvements. These special districts need not, and often do not, even coincide in area with existing divisions.

The growth in number, size, and powers of the larger urban areas known generally as cities, is another significant factor which will be considered more in detail in the next two chapters. But the conclusions that may be drawn from the existing situation with regard to the subdivisions so far considered seem to be first, that there is needless duplication and complexity of these areas; second, that subdivisions of counties for general governmental purposes seem to be ineffective and unnecessary save as regards urban purposes; and third that the solution of the objections presented by both of the foregoing conditions would seem to lie in making the county, or an even larger unit, the primary area for the general administration of these public concerns, with the exception of truly urban problems presented by the larger municipalities. The general governmental needs of all the rural and semi-urban territory within the county could be more effectively handled by the larger unit, while the special needs for public improvements, such as streets, sewers,

drains, levees, irrigation facilities, water supply, school buildings and other public works, experienced by special sections of the county could be met by the expedient of special assessments levied by the county against the property benefited by these improvements, as is done so extensively in the case of cities, to be considered later. In this way the county would become a vital and interest arousing area of local government, while petty, overlapping, and sometimes conflicting minor jurisdictions would be eliminated.

CHAPTER VI

THE ORGANIZATION OF CITY GOVERNMENT[1]

General Characteristics of the City.— The term city, as indicated in the preceding chapter, has no definite or universal meaning in the United States, so far as the question of size is concerned. In some states,[2] as has been seen, the term is legally applicable only to places of 10,000 inhabitants or more. In other states, such as Oklahoma, for example, municipal corporations with a population of 2,000 or more are recognized as cities, and the minimum population of cities, as distinguished from the smaller urban corporations considered in the last chapter generally lies between those extremes in the various states. From this point of view, 5,000 would rep-

[1] The best and most recent general treatment of the organization of American city government will be found in Munro, *The Government of American Cities,* third edition (New York, 1920). Briefer treatments will be found in other works on American city government, such as Beard, *American City Government* (New York, 1912); Goodnow, *City Government in the United States* (New York, 1904); Deming, *The Government of American Cities* (New York, 1909); Wilcox, *The American City* (New York, 1904). Still briefer treatments may be found in the standard textbooks on American government, such as Bryce, *The American Commonwealth,* revised edition (New York, 1910), Chap. I; Beard, *American Government and Politics,* third edition (New York, 1920), Chap. xxvii; Munro, *The Government of the United States* (New York, 1919), Chap. xli. References to special aspects of the general topic of municipal organization will be given at the appropriate place in the text. Hatton, *Digest of City Charters* (Chicago, 1906), though now out of date, contains a valuable compilation of the charter provisions of the leading cities at that time. Exhaustive references to the various topics discussed in this chapter will be found in Munro, *Bibliography of Municipal Government* (Cambridge, 1915).

[2] New York and Pennsylvania, for instance.

resent a fair mean minimum population for the class of urban corporations to be considered herein, although, as has been noted, the United States Census now includes all incorporated places of more than 2,500 population in the statistics of urban territory. For our purposes then we may regard as cities those general urban corporations which begin in population where the lesser corporations leave off, always remembering that this varies from state to state and that even within a single state there may be villages, boroughs, or incorporated towns larger than the minimum population prescribed for cities.

We have seen in the chapter on the development of local government in the United States that already in colonial times there were, except in New England, a special class of urban corporations known commonly as boroughs, in imitation of their English prototypes, and that some of these were even called cities. New York was known as a city while still under the jurisdiction of the Dutch, as early as 1653, and retained that name after the conquest by the English, and Philadelphia received a charter as a city in 1691. New Jersey had five incorporated cities in colonial times as well as two boroughs, but there seems to have been no legal distinction between the two classes of corporations. A few cities were found in some of the other colonies, but generally they were designated as boroughs in the charters.[3] At the time of the Revolutionary War there were only five municipal corporations with a population in excess of 8,000, and even these averaged less than 20,000, their combined population being less than three per cent of the total population of the colonies. After the Revolution, the term city came quite generally to be applied to the larger places that were incorporated by the legislatures.

[3] See Fairlie, *Essays in Municipal Administration*, Chap. iv.

A striking feature of the development of cities in the United States has been the steady increase not merely in the number of cities, but in the size of the larger ones, and, most significant of all perhaps, in the proportion of the country's population that live in these more srictly urban communities. In 1820 the number of urban corporations with populations of more than 8,000 had increased to only thirteen and comprised less than five per cent of the total population. But in 1910 the number of such places had risen to 778 and contained over 38 per cent of the country's inhabitants.[4] If the ratio of increase in the decade from 1910 to 1920 remains the same as in the ten years from 1900 to 1910, and all indications seem to point to the conclusion that it will at least have been maintained, if not exceeded, the number of places with more than 8,000 inhabitants will in 1920 have mounted to more than a thousand, while the apparently smaller increase in rural population in the same decade will tend to bring the ratio of the total population living in such communities near the 50 per cent mark. In the same way the number of large cities, those with a population of 100,000 or more increased from one in 1820 to fifty in 1910, and to sixty-eight in 1920. As late as 1890 there were only four cities in the United States with more than half a million population. In 1920 the number of such cities had reached twelve, with several others approaching that figure.

Nor has this development been restricted to any one part of the country. While in respect to all three of the factors considered above, namely the number of cities, their size, and the degree of urban concentration there are very marked differences in the various sections of the country, all parts of the country have reflected the same

[4] Munro, *The Government of the United States*, p. 572 note.

general tendency of a marked development in all of these respects.

Another general characteristic of cities that is worthy of note, is to be found in certain peculiarities of urban populations as compared with the rest of the inhabitants of the country, some of which are clearly of some significance in their bearing on the problems of urban local government. Chief among these characteristics may be mentioned the preponderance of renters as compared with home owners, the lack of a community or similarity of economic interests and of neighborliness, the congregation of colonies of alien immigrants, the greater *per capita* earning power of the city populations, and the superior opportunities for organization and for the dissemination of doctrines and theories. All of these factors, besides others that might be mentioned, tend to make cities the centers of unrest and the breeding places of radicalism, while the rural populations as a rule cling to the conservative attitudes.

Boroughs and cities were originally chartered by the governors in the colonies, in conformity with the plan of borough charters granted by the crown in England. The grant of powers through the instrument known as a charter was, as already noted, a feature that distinguished the boroughs from other local government areas in the colonies as well as in England and which has continued characteristic of cities in many states of the Union to-day. But after the Revolution charters came to be granted by the legislatures instead of by the governors, a change of procedure that on the one hand emphasized the shifting of governmental powers from the executive to the legislature in the state constitutions, and on the other resulted in the cities being the mere possessors of statutory organization and powers instead of the grantees of vested rights

which could not be modified except by judicial action. The doctrine that corporate charters are contracts not subject to impairment under the Federal and state constitutions has never been extended to include the charters of municipal corporations, which are considered absolutely subject to legislative amendment or repeal except so far as expressly protected by other provisions of the constitutions.[5]

Finally, it is still a general characteristic of cities, that their creation and organization is based on, although not legally limited to, the desire of the local electors, as evidenced by a petition for incorporation, although changes in the charters have very commonly been made without reference to local desires, a point that will be considered hereafter.

The Basis of City Organization.— The city charter is, as has been noted, a distinguishing characteristic of this type of local government. It is in fact the basic law or constitution under which the city is organized and operates. It determines both the governmental organization and the powers and duties of the corporation and its agencies. We are here concerned only with the matter of organization, as the question of powers and duties will be examined in the discussion of the functions of city government, but many of the observations here made will be seen to apply obviously to the matter of powers also. From the point of view of the manner of granting charters to cities five fairly distinct methods are distinguishable among the varying practices of the states.

Special Charter System.— The first method to be considered is that of special charters enacted for each community as it applied for incorporation as a city. This was the method followed in colonial times and continued to

[5] See below, pp. 358 ff.

be the rule throughout the United States until the middle of the nineteenth century, so that up to that time each city could usually point to a document known as its charter, which prescribed its organization and powers. Under this system, which is still in effect in various states of the Union, local needs and local desires could be considered and the diversity of local conditions could be given recognition in different charter provisions. Gradually, however, with the growth of political party organization and especially with the development of the spoils system the power of the legislature to deal separately with each municipality came to be subject to the most serious abuses. The dominant political faction in the state government frequently employed this power to control the personnel of the city administration, as well as to direct the important functions of awarding contracts and granting franchises in the city streets, and in other ways to the detriment of the city. These abuses led to constitutional limitations on the power of legislatures over the incorporation and charters of cities which resulted in the other methods of creating and adopting charters referred to above.

General Charter System.— The first instance of a constitutional provision imposing general limitations on the power of the legislature in incorporating cities is to be found in the Ohio Constitution of 1851.[6] There had been earlier instances of constitutional limitations on specific aspects of legislative control it is true,[7] but this was the

[6] This discussion of the constitutional limitations imposed upon the legislatures in their power over city organization is based largely on the excellent treatment of the subject to be found in McBain, *The Law and Practice of Municipal Home Rule* (New York, 1916).

[7] The Louisiana Constitution of 1812 assured to the citizens of New Orleans the right of selecting their own municipal officers instead of having them, especially the mayor, appointed by the Governor. The New York Constitution of 1821 similarly provided for the local instead of central appointment of the mayor, and the Con-

origin of the general prohibition on special legislation with regard to local corporations that came to be so commonly inserted in subsequent constitutions. The Ohio provision prohibited special acts conferring corporate powers and required the general assembly to provide for the organization of cities and incorporated villages by general law. This, as Professor McBain has pointed out, was apparently not directed against specific abuses by the legislature of its power to incorporate by special charter, but was merely the extension of the principle of prohibiting special charters for private corporations, a principle based on serious abuses and which had already found expression in the constitutions of various other states. In those other states, however, municipal corporations had not been included in the prohibition. Ohio was followed in the extension of the constitutional prohibition against special laws to cities by a number of other states in the next twenty years,[8] in none of which, however, do they seem to have been called forth by specific abuses of the power of incorporation by special charter. In Illinois, however, in 1870 this prohibition was inserted in the constitution to guard against a definite legislative abuse of dealing with individual cities, and since that date the general prohibition

stitution of 1846 applied the principle of local selection to all city officers. Similar provisions were inserted in the constitutions of Wisconsin (1848), Virginia (1850), Michigan (1850), and Kentucky (1850). But these provisions seem hardly to have been aimed at correcting abuses practiced by the legislature over the official organization of cities but were, rather, a mere expression of the generally accepted theory that local officers should be locally chosen. A serious abuse of the power to establish central commissions over cities did develop, however, and led to further limitations that will be considered farther on.

[8] Indiana (1851), Iowa (1857), Kansas (1859), Nevada (1864), Nebraska (1867), Arkansas (1868), Tennessee (1870), Virginia (1870).

of all special acts relating to cities has been incorporated in other constitutions, so that over half of the states have now abolished the special charter system, at least theoretically, by constitutional provision, and require cities to be incorporated by general laws.

Classified Charter System.— But the general charter system under which the legislature was required to provide a machinery of government and an extent of powers alike for all cities, while it did tend to make it harder for the legislature to interfere improperly in the concerns of individual cities, was by no means without its drawbacks, since it prevented proper as well as improper distinctions between cities. So in a large number of the states that had incorporated the requirements of the general charter system, the legislatures either simply ignored the prohibition, as in Ohio for nearly twenty years after 1851, or as also in Ohio later on circumvented it by the process of classification and legislating specially for the cities of each class. The courts commonly held that such classification was not a violation of the constitutional prohibition against special legislation, going, in some cases, even to the extent of sustaining systems of classification which put each city of the state in a special class.

Thus arose the classified charter system which was originated to overcome the requirement of absolute uniformity and which is now not only permissible by judicial sanction in a number of states having the prohibition against special legislation, but is expressly permitted or even required by the constitutions of a dozen other states, some of which define the classes which may be created.[9] The classified charter system under which cities may be grouped into classes according to population with different charters for different classes is, if properly safeguarded

[9] Kentucky, New York, Minnesota, and Virginia.

against abuse, a distinct improvement over a rigid general charter system, because it takes into account the fact that cities of different sizes have different needs and should not all be treated alike. This is regarded in this country as almost axiomatic, but it may be recalled in this connection that France, whose local government is certainly not inferior to our own, has found it practicable to legislate uniformly not merely for all sizes of communities that we should call cities, but also for the most insignificant of rural communes, as small as our smallest hamlets.

Home-Rule Charter System.— But under all three of the charter systems so far considered the local electors in the city whose charter was to be granted or amended had no direct voice in determining the kind of charter under which they were to be governed. Under the special charter system, it is true, the local electors could bring some pressure to bear upon their representatives in the legislature to secure the passage of the kind of a charter desired by them, but even if the legislators involved were not influenced by special interests in the fixing of the charter provisions, the forces in control of the whole legislature might step in to defeat the express purpose of the local citizens. Under the general charter and classified charter systems there was even less likelihood that local opinion would be effective in a positive way. In New York where cities are classified by the constitution, acts applying to less than all the cities in a class are subject to a suspensive veto of the local authorities, but this does not insure in any way a positive influence to the locality. It was the continuance of legislative interference with cities, particularly with the more important cities that resulted in the so-called home-rule charter system coming into being, as a means of insuring not merely a negative protection against individual meddling by the legislature, but also

a positive voice in determining the framework of city government.

The home-rule charter movement began in Missouri in 1875 when the constitution of that year gave to cities of over 100,000 population, and specifically to St. Louis, the right to frame and adopt their own charters. This was a distinctly new departure in the direction of giving the local electorate a voice in the drawing up of the city charter. The idea made but slow progress in other states, only three states, California, Washington, and Minnesota having adopted the principle in the next thirty years. But since 1900 nine other states have adopted the home-rule charter system, Colorado, Oregon, Oklahoma, Michigan, Arizona, Ohio, Nebraska, Texas, and Maryland, so that this system is characteristic of the method of granting city charters in over one-fourth of the states to-day, and is worthy of brief consideration.

The details of the system vary considerably from state to state but the basic idea is the same in all. The size of the cities to which the privilege of framing their own charters is extended varies from the smallest cities or villages in Michigan, Minnesota, Ohio, and Oregon to cities over 100,000 in Missouri, and to Baltimore alone in Maryland. In every case there is to be a local board to draft a charter, upon action by the local council or upon petition of the electors. This body is almost universally elected and its labors must be ratified by a majority vote of the local electors in every state except Oregon, where the city council itself may act. In California the legislature of the state must approve the charter, but may not amend it. In Michigan the Governor has a suspensive veto which may be overridden by two-thirds of the charter commission, and in Oklahoma and Arizona the Governor must approve the charter but may refuse only

if it is in conflict with the state constitution or laws. The same general provisions apply to charter amendment.

These home-rule charter provisions relate in general also to other powers than that merely of adopting a framework of government. But the extent of the functional powers conferred presents a very complicated question which will be considered at another place. Suffice it to say here, the freedom accorded to cities to initiate their own plan of city organization has resulted in a tremendous stimulation of interest in these matters and has been largely responsible for the extensive adoption of the newer forms of city government in this country. So far as the mere machinery of city government is concerned there would seem to be no valid objection to allowing each city to choose that form which it deems best. The extension of the home-rule charter system to other states is imminent.[10]

Optional Charter System— The fifth method of granting city charters is that known as the optional system and is quite commonly found in states that have not adopted the home-rule charter system. Under this plan the legislature enacts two or more, in New York seven, different organic laws for cities and allows the cities to select from among them. More than a dozen states have chosen this mean between the extremes of absolute uniformity on the one hand and the complete local divergence possible under the home-rule charter system on the other. It is to be noted, however, that this system provides no constitutional check upon the legislative power over cities. What freedom the legislature allows it may take away. But since the legislature could not delegate its legislative power by

[10] Passed by the Wisconsin legislature and by the Pennsylvania legislature in 1919 for the first time. See *American Year Book*, 1919, p. 237.

authorizing each city to adopt its own charter in the absence of constitutional authorization, the next best method of securing local option is to offer a sufficient variety of charter types to suit every taste.[11]

The Popular Basis of City Government

Powers of the Electorate.— It may be laid down as an almost universal rule that the qualifications for voting in American cities are the same as those for voting in the regular state elections. The principal exceptions, prior to the adoption of the Nineteenth Amendment, occurred in those states where, although women had not been admitted to the suffrage generally, they were permitted to vote in municipal elections. In some instances, on the other hand, only property taxpayers are allowed to vote in local elections on bond issues. But generally speaking, the municipal franchise like the state franchise is now based on the principle of universal adult suffrage, the variations found in different states with regard to citizenship, residence, and educational requirements being reflected in the city electorate also.

The participation of the electorate in the government of the city presents two rather distinct phases and may be conveniently classified into indirect and direct participation. The indirect participation consists in the nomina-

[11] In accordance with the general constitutional theory of our American separation of powers and the lodging of the legislative power in the legislature, it would not be constitutional for the legislature to delegate its power of incorporation and charter legislation to the cities themselves. It is interesting to note, however, that as early as 1858 the Iowa legislature did confer on cities operating under existing charters the right to amend their charters independently of the legislature, a power which was sustained by the state courts. This is perhaps the earliest instance of a real though limited home-rule charter power in this country. See McBain, *op. cit.*, pp. 82–84.

tion, election, and recall of the city officials. The direct participation consists in the adoption or rejection of measures by means of the initiative and referendum. Each of these phases of popular participation in city government may be considered briefly here.

Originally the participation of the municipal electorate in the government of the city was confined to the single process of choosing the elective officials, after the local electorate had been consulted in the constituent question of incorporation. Furthermore, the number of city officials chosen by popular election was at first very limited, the members of the city council being normally the only officers elected in that manner. But gradually the number of such locally elected officials increased in the cities, as it did in the counties. We have seen that early in the nineteenth century mayors came to be elected by popular vote also, and with the expansion of administrative activities an increasing number of administrative officers, boards, and commissions were added to the elective list, even judicial officers being brought under the elective system in the enthusiasm for democracy that marked the second quarter of the last century.

As the organization and effectiveness of political parties developed and official ballots with party designations became the rule it was found that the right of voters to participate merely in the elections tended to become largely an empty formality unless they could also have a real voice in the selection of the candidates. So the method of selecting candidates was made the subject of regulatory legislation and by the introduction of primary elections, closed and open, the city electorate in the majority of states came to participate in two elections instead of one each time that new municipal officials were to be chosen.[12]

[12] For an excellent discussion of the history and nature of pri-

Then, within recent years, a further extension of the indirect participation of the municipal electorate has occurred in the adoption of the recall, a device by which the voters of the city were enabled to get rid of an undesirable or undesired official before the end of his term, by requiring him, upon a petition signed by the requisite number of voters, to come before them at an election to determine whether he should continue in office or be succeeded by someone else. This new departure originated in the Los Angeles Charter of 1903 and has been adopted in the charters of more than a hundred cities since, chiefly those operating under the commission or commission-manager form of government, though the principle has been given wider recognition in a number of state constitutions,[13] and in the general laws of a number of others.[14]

A general discussion of ballot reform in this country, which affected, of course, the practice of elections in cities as well as in other local and state elections, involving such developments as the Australian ballot, corrupt and illegal practices acts, etc., cannot be undertaken

mary elections see Merriam, *Primary Elections*, second edition (Chicago, 1909).

[13] Among them Arizona, California, Colorado, Idaho, Kansas, Louisiana, Michigan, Nevada, Oregon, and Washington. In Idaho, Louisiana, Michigan, and Washington judges are excepted.

[14] Discussions of the nature and operation of the recall may be found in *The Initiative, Referendum, and Recall*, edited by Munro (New York, 1912); Oberholtzer, *Referendum, Initiative, and Recall in America* (New York, 1911); Wilcox, *Government by All the People* (New York, 1912); Beard and Schultz, *Documents on the State-Wide Initiative, Referendum and Recall* (New York, 1911); Beard, *Digest of Short Ballot Charters* (New York, 1911); Barnett, *The Operation of the Initiative, Referendum and Recall in Oregon* (New York, 1915); and in numerous articles in the *National Municipal Review* and the *American Political Science Review*.

here.[15] But some of the developments that had particular relation to or special significance in cities may be briefly mentioned. The domination of municipal politics by state party organizations has led to several developments intended to diminish this undesirable influence, among which may be noted especially the separation of city from general elections and the increasing use of the nonpartisan ballot. The whole so-called short-ballot movement, moreover, which aims to increase the power of the individual voter by making his task simpler and more interesting and freeing him from the necessity of relying on professional political guidance, has, like the abolition of ward politics urged for similar reasons, made the most marked progress so far in connection with the spread of commission government for cities. In this connection might also be mentioned the development of the civil-service merit system, which was particularly applicable to cities and which has there manifested some of its most interesting and instructive aspects.

The Preferential Ballot and Proportional Representation.— Two recent developments in reform inaugurated wholly or chiefly in cities so far in the United States are of sufficient fundamental importance to warrant a brief mention here. These are the preferential ballot and proportional representation, which stand in no necessary relation to each other but which as a matter of fact are found combined in the system of proportional representation adopted by the three American cities operating under that system at present.

The theory of the preferential ballot is very simple.[16] The ordinary ballot expresses fully the voter's choice only

[15] For a bibliography of literature dealing with these general phases of elections and ballot reform see Munro, *Bibliography of Municipal Government* (Cambridge, 1915), pp. 44–48.

[16] See the author's *Applied City Government*, pp. 13–16.

if there are no more than two candidates for any given position. If there are more than two candidates then a voter in casting his ballot for a particular candidate is at the same time voting against all the other candidates equally. Now as a matter of fact it is usually true that if there are a number of candidates in the field, and one of the aims of the ballot reform has been to make candidacies possible for the independent man without organized party support, the voter is by no means indifferent as to which of the other candidates is chosen in case his own selection fails to get in. Briefly stated the preferential ballot is intended to make it possible for the voter to register his opinion of the other candidates in addition to indicating his own preference. This is done by permitting him to indicate on the ballot in appropriate columns or by the use of figures his own candidate as first choice and the order in which he approves of the other candidates.

When the votes are counted the first choices are added up first. If any of the candidates has received a majority of first choices he is declared elected and the result is just the same as though the preferential feature had not been used. But if no candidate has succeeded in getting such a majority then the preferential feature comes into play. The second choices cast for each candidate are then counted and added to his first choices. If the total of first and second choices cast for any candidate then equals a majority of the ballots cast, that candidate is declared elected. If that is not the case, the third choices for each candidate are added to the others and the candidate receiving the largest total is declared elected.[17] Under the prevailing plurality rule effective in

[17] There are several variations in the forms of preferential ballots used, in the instructions issued to the voters, and in the manner

this country the candidate receiving the largest number of votes would be declared elected no matter how small a proportion of the total vote that might be, and no matter how strongly the majority may have been opposed to him, as evidenced by the preferential choices cast. The person selected under the preferential plan will at the very least be more or less acceptable to the largest number of voters, though of course no strict majority election is possible under the preferential system if there is not as a matter of fact a candidate who can secure a majority of first choices.

The possible evils of plurality election are well recognized and it may be pointed out here that the preferential ballot furnishes a much better cure for those evils than can be secured by the second election limited to the two highest candidates in the first election, a method that is employed in some states to-day in the primary elections. For, where there are a large number of candidates in the first election it may well be that neither of the two highest candidates is at all acceptable to the majority of the voters. Not only does the preferential ballot record the voters' wishes more accurately in case there are no real majority candidates, but it does away with the expense and trouble of a second election, and if applied to the regular election makes primaries unnecessary, since the voter can effectively nominate and elect at the same time, the result of the primaries being principally to limit the contesting candidates to the ones standing highest on the party lists.

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of counting employed, but the one here given is used because of its simplicity for purposes of illustration. For further references on the preferential ballot see the following articles in the *National Municipal Review:* Vol. I, pp. 386–400 (July, 1912), and Vol. III, pp. 49–56 and 83–92 (January, 1914). Also Hoag, "Effective Voting" (Washington, 1914), Senate Document No. 359, 63d Congress, 2d Session.

Preferential voting originated in this country in Grand Junction, Colorado, and has since been adopted by more than fifty cities. As originally applied it was intended to substitute a complete expression of the voters' opinion of several candidates for one position for the inaccurate and unsatisfactory plurality election. Proportional representation, however, the other and most recent election reform adopted by American cities, gives expression to an entirely different viewpoint. It denies the propriety of election by majorities for legislative bodies since that leaves minorities totally without any representation in the election district. Various schemes for minority representation have been tried at various times in this country and abroad, such as the limited vote and the cumulative vote, but proportional representation in its orthodox form discards half-way measures and sets up as its ideal the reproduction in miniature in the legislative body of the groups of voters who are united on the choice of a candidate. For attaining this end there are two main forms of proportional representation, the list system and the so-called Hare system, though there are a number of variations of the two main systems in use or advocated by supporters of the proportional representation idea.[18] The principal difference is to be found

[18] Two recent works dealing with proportional representation are Humphreys, *Proportional Representation* (London, 1911); and Commons, *Proportional Representation,* second edition (New York, 1907). Current information on the spread of the proportional representation movement throughout the world will be found in the *Proportional Representation Review* (Haverford), the quarterly publication of the American Proportional Representation League. Discussions and explanations of the system are also contained in the pamphlets of that organization. Recent articles in the *National Municipal Review* deal with the establishment and operation of the proportional representation system in the American cities that have adopted this plan. See, Vol. V, No. 1 (January, 1916), p. 56; Vol. IX, No. 7 (July, 1920), p. 408.

in the fact that the so-called list system tends to emphasize party alignments by grouping the names of candidates in lists while the Hare system tends to minimize such alignments by placing the names on the ballots in alphabetical or chance order without party designation.

As the Hare system, adopting also the preferential feature, and further designated as the unanimous-constituency system, and from the point of view of counting as the system of the single transferrable vote, is the one which has been supported by the proponents of the system in this country and the one actually adopted in the cities that have so far adopted the plan in this country, a brief description of this plan may here be included. The electoral quotient or quota is determined by dividing the number of votes cast by the number of places to be filled plus one.[19] Then each candidate who receives a number of first choices equal to the electoral quotient or quota is declared elected. If any such candidate or candidates receive more first choices than necessary to elect them, the surplus ballots indicating them as first choice are counted for the candidate not yet elected who is designated on those ballots as second choice. Then all candidates whose total of first and second choices equals the quota are declared elected and the process is continued until all places are filled or all surplus votes transferred. If there are still places unfilled then the lowest candidate on the list is dropped and the other choices on his ballot are transferred in the same manner. This process is continued until the required number of candidates have been chosen or only the required number remain in the count.

[19] In the Ashtabula charter as amended in 1915, the first one in this country to adopt the proportional representation system, there are seven members of the city council to be elected in this fashion.

The proponents of proportional representation for cities argue that the election at large of councilmen, which is characteristic, as has been seen, of commission government and the commission-manager plan, means that the majority slate goes through and the minority is unrepresented. Election by districts or wards did in practice tend to insure some minority representation, though it could frequently be prevented or minimized by skillful gerrymandering, whereas under election at large the majority party would select the entire council, and this is regarded as a weakness. There are some serious considerations of both a theoretical and a practical nature to be urged against proportional representation,[20] but the spread of the idea in other countries in the last few years has been phenomenal[21] and its adoption by four.[22] American cities already presents an entering wedge that in all probability will be driven home by the further spread of the system. If in spite of obvious *a priori* objections it proves its value in American cities, it will undoubtedly be widely adopted and will introduce a rather fundamental departure in the manner of constituting the city representative body.

The Initiative and Referendum.— If the indirect participation of the electors in city government has shown an

[20] See an article by the author, "Proportional Representation: A Fundamental or a Fad?" in the *National Municipal Review*, April, 1916, pp. 273–277, and an answer to the same by Humphreys, "Proportional Representation," *ibid.*, July, 1916, pp. 369–379.

[21] Among the more important recent additions to the ranks of nations electing their national legislatures on this plan are France in 1919; Germany under the new Constitution of 1919; and Uruguay in the Constitution of 1919. In Great Britain the House of Lords proposed the adoption of proportional representation in the Electoral Reform Bill of 1918, but it was rejected by the Commons.

[22] Ashtabula, Ohio; Kalamazoo, Mich.; Boulder, Col.; Sacramento, Cal.

ever increasing complexity and need for careful regulation, direction, and protection, the development of direct participation in the shape of the initiative and referendum has increased the power and responsibility of the voter even more. The use of the initiative and referendum in this country is not confined to cities nor is its chief application even to be found there, for as instruments of direct positive legislation or of negation of legislative measures, it is naturally of far greater significance in the field of state government where the fundamental and controlling laws are enacted, than in the field of city government where, as will be seen, legislation plays a very much less important part in the governmental processes. Nevertheless, since the use of these governmental devices in cities has increased tremendously in the last generation, particularly in conjunction with the spread of the simplified city government under the commission and commission-manager plans, to say nothing of their fundamental use in connection with the framing and amending of the city charters themselves already noted in connection with the home-rule and optional charter systems, they cannot be ignored as innovations of fundamental significance in city government.[23]

It may be pointed out here in passing, without entering into a consideration of the theories and practice of the introduction of these features of direct, as contrasted with representative, democracy, into city government, that

[23] Literature on the initiative and referendum in America is now pretty extensive. Among the more important references on the subject there may be mentioned, in addition to the books noted on page 313 as containing discussions of the recall, Bulletin No. 6, "The Initiative and Referendum" (Boston, 1917), printed for the Massachusetts Constitutional Convention; and Bulletin No. 2, "The Initiative, Referendum, and Recall" (Springfield, 1920), prepared for the Illinois Constitutional Convention.

the characteristics of urban populations commented upon in an earlier part of this chapter cannot but have an important bearing on the way in which these new devices will operate. Conclusions as to the merits or defects of such governmental features will, therefore, have to be based on an examination of how they actually work out in cities rather than on general considerations or even on the method of their operation in the state-wide form. In half of the states of the Union either the referendum or the initiative or both with regard to ordinary legislation are in force, and the referendum on constitutional changes is, of course, an instrument of long standing in the United States and is now practically universal in the states of the union.

Main Types of City Organization

Types of City Governments.— We have seen in the historical survey of local government in the United States [24] that borough government in colonial times was modeled on the organization found in English boroughs, characterized by the union of all borough powers in a council comprising councilors, aldermen, and mayor, the latter chosen normally by the council, though in a number of instances appointed by the governor for the purpose of control, but not constituting in either case a chief executive or administrative officer. It was also pointed out that in the post-Revolutionary period a fundamental departure from this type of city organization made its appearance in one or two important cities, which came to characterize the typical American city government from that time on. This was the introduction of the system of checks and balances and separation of powers, that played such a large part in the organization of the Fed-

[24] Chap. ii.

eral Government, into the municipal field. The outstanding feature of this type of city government as it gradually took definite form and soon came into almost universal use was the independent nature of the position of the mayor; who was made directly elective, given a suspensive veto over the acts of the council, and accorded an increasing amount of administrative authority. Thus arose the so-called mayor-and-council type of government, which although presenting many variations in the different states and even in the different cities of the same state, and undergoing a gradual development as a whole in the nineteenth century nevertheless stands out in a sufficiently well defined manner not only from the earlier council type but also from the newer types that have been developed in the twentieth century. This mayor-and-council type, in one form or another, is still the overwhelmingly preponderating type of city government in the United States to-day, for not only is it found in three-fourths of the cities that in 1910 had a population of 100,000 or more, but also in the great majority of the cities that had between 5,000 and 100,000 in that year.

The second type of American city government originated in Galveston, Texas, in 1901 and is known as the commission form of government. This is characterized by the disappearance of the independent executive and the union of legislative and executive powers in the hands of a small commission elected at large. In its fundamental nature it presents a curious reversion to the colonial type of a century and a quarter before. Commission government is found, with modifications and variations, in between three and four hundred cities of the United States. It is found almost wholly in cities which had a population of less than 250,000 in 1910 and none

of the nine largest cities of the United States in that year, those with more than 500,000 inhabitants at that time, is operating under this form. This type of government is relatively strong, however, in the class of cities having between 25,000 and 100,000 inhabitants, though the majority of commission governed cities are in the population classes below that figure.

The third type of city government is known as the city-manager plan and is of even more recent origin and of much more restricted extent. It is, in its typical form, rather a variation of commission government than a distinctly new type and this relationship is expressed in the term commission-manager government which is now generally applied to it. In this form the city commission as found under the commission form is retained, uniting legislative and executive or administrative powers, but the chief administrative function or active direction of the administration is entrusted to an administrative head responsible to the commission and commonly known as the city manager. This type of government originated in Sumter, South Carolina, in 1912, although Staunton, Virginia, seems to have been the first city to employ a city manager. It is now found, including numerous variations, in nearly two hundred cities. But only a few cities of more than 100,000 population have so far adopted the plan and the majority of places in which it is found are small cities of around five thousand population.

The Mayor-and-Council Plan.— The mayor-and-council plan of city government, which, as has already been noted, is the prevailing American type to-day, and was at the close of the last century virtually the only type here found, is characterized by the distribution of the powers and functions of the city among several gov-

ernmental branches in imitation of the check and balance plan followed in the Federal and state governments. This general type of city government has itself undergone a rather extensive process of development since its inception in this country, with the result that not only were various features emphasized at different times in the history of this development, but even now there are important differences to be noted in the governmental organization of those cities that are operating under the plan.

For the first half of the nineteenth century, approximately, the city council was the more important of the two branches of government, exercising not merely the chief legislative power but also a considerable control over the administrative activities of the city. But gradually the general practice of erecting special administrative departments, sometimes appointed by the state government, but more generally popularly elected, cut into the administrative and financial powers of the council, while the veto power of the mayor, his power of recommending legislation in his messages, and his increasing importance as political head of the city as well as the practice of minute legislative regulation of municipal affairs resulted in a marked reduction in importance of the legislative powers of the council. Finally the tendency to centralize administrative powers in the hands of the mayor, including such fundamental functions as the preparation of the budget and the appointment and removal of department heads, a tendency which had become quite marked toward the close of the nineteenth century, pretty definitely shifted the political center of gravity to the executive.

The Mayor.— The American city mayor is now universally elected by popular vote. Herein he differs not

merely from the colonial mayors and mayors of the early years of the nineteenth century, who were ordinarily appointed by the Governor or chosen by the council, but also from the mayors of French and English cities to-day, who, as has been seen, are always selected by the city councils. Special qualifications beyond that of being a qualified voter are rare, and neither long public service for the city nor conspicuous ability is in practice apparently of importance in determining the eligibility of candidates. As a rule, faithful service to the political organization that controls municipal politics is the best asset a candidate for the office can possess.

The commonest term of office for mayor is two years, in accordance with the general practice as to the term of local officers. Single-year terms are common in New England, where the one-year term of office still clings in other offices also, and in some instances three-year terms are found. In the largest cities of the country the four-year term is common and it may be seen that there is a distinct tendency toward lengthening the term from one to two years and from two to four years in the larger cities. In the cities with two-year terms, furthermore, there is a pretty generally recognized practice that the incumbent shall be entitled to the candidacy on his party ticket for a second term, thus tending to make the term a four-year term in fact. It seems to be generally agreed that the four-year term is more desirable than the two-year term, because the importance of the mayor's office in many cities is such that he must have, in order to become acquainted with the duties of his office and to demonstrate his capacity as chief officer of the city, a longer period of service than two years. The danger of having the city saddled for this longer period with an incompetent or unsatisfactory mayor is some-

what offset in the cities that have adopted the device of the recall, by the possibility of removing him before his term is up through this reverse of the election process. Otherwise the mayor, like other local officers, is usually only removable by impeachment or by action of the courts, although in New York and some other instances the Governor of the state may remove the mayor.

Another characteristic of the American mayor, as contrasted with the French and English mayors is that he is practically always a salaried officer. In the smaller cities that salary is inadequate, of course, and even in the largest cities, where in some instances the mayor receives a salary larger than that of the Governor of the state,[25] the remuneration is not sufficient to pay the expenses which go almost inevitably with the office. Unless the position is held by public spirited men of independent means, therefore, a relatively rare though not unknown occurrence, the mayor almost necessarily looks to other incidental and sometimes highly questionable ways of making up the financial loss involved in serving in the position, for the office of mayor is seldom a stepping stone to further political honors.

The powers of the mayor may be conveniently considered under the three main heads of legislative, financial, and administrative. On the legislative side the position of the American city mayor is closely analogous to that of the state Governor and the national President. He may recommend measures in annual or special messages and if, as is not infrequently the case, he is in accord with the political forces that control a majority of

[25] In New York the Governor receives $10,000, the mayor of New York City $15,000. In Illinois the Governor receives $12,000, the mayor of Chicago $18,000. In Pennsylvania the Governor receives $10,000, the mayor of Philadelphia $12,000. In Massachusetts the Governor and the mayor of Boston each receives $10,000.

the council, or is himself the recognized leader of the controlling organization, his influence on the trend of city legislation may be very great. On the other hand, through the now nearly universal possession of the suspensive veto on measures passed in the council, he wields a powerful political weapon of a negative nature. Whatever may be thought of the value of the suspensive executive veto in the national and state governments, a governmental device that is distinctly American, the consensus of opinion among students of city government seems unmistakably to be tending to discredit it in the field of municipal government. Like many other aspects of our theory of checks and balances in government, it has operated primarily to diffuse responsibility and confuse the voter, rather than to temper corruption or folly in the legislative body with superior wisdom and honesty in the executive.

Closely related to the power of the mayor over legislation is his power over the budget. A budget, properly speaking, presents both administrative and legislative aspects. A financial statement for the year just past is part of every proper budget and its preparation and presentation is obviously an administrative function. A statement of estimated expenditures and receipts for the coming year combined with proposals whereby the proposed expenditures may be met is also of the essence of a budget. But this obviously involves fundamental policies, since the amount of money which the city will spend and the manner in which it will apportion the appropriations are among the most vital matters connected with the government of the city. Formerly this function was performed by a committee of the council, as it is in England to-day, but the familiar congressional tactics of log-rolling, transplanted into the ward organization

of the city resulted in a noticeable tendency to take this power, along with so many others, out of the hands of the council. In some cities, notably New York, Baltimore, and Detroit, this function has been put into the hands of a special board, usually known as the board of estimate and apportionment. But in other cities, such as Philadelphia and Boston among the larger municipalities, the power has been entrusted to the mayor, and the trend of opinion to-day seems to be strongly in favor of the so-called executive budget.

If by an executive budget is meant merely the preparation of the original budgetary statement and proposals by the mayor, the council being left free to deal with his proposals as it pleases, as in Philadelphia, for instance, a more orderly program is possible, but the evils of log-rolling have not been eliminated, evils which were largely responsible for taking the budget power away from the council. If, however, the executive budget involves, as it does in Boston, for instance, a limitation upon the power of the council to add appropriation items, then there is a further very serious and fundamental diminution of the power of the representative body involved, which cannot be lightly passed over. A council may conceivably, and should theoretically, be in a better position to reflect the will of the municipal electorate as to how much importance should be given to public education, public health, police and fire protection, recreation, or any of the other municipal activities, in the municipal program for the ensuing year, than a single official. If a mayor could be presumed to err only on the side of extravagance, restricting the power of the council to cut down expenditures could well be justified. But a mayor is just as likely to err in not giving proper importance to activities that may be regarded as very impor-

tant by the electorate, and in that case the representative body is powerless to cure the omission. From that point of view the board of estimate and apportionment plan is less objectionable, because the opinion of a group of men instead of just one man is substituted for that of the council. But this plan has the fundamental defect of adding a third governing authority to the existing legislative and executive branches, to deal with what is perhaps the most important of all local governmental acts, the raising and apportioning of the funds of the city.

Under the head of strictly administrative powers of the mayor may be mentioned principally the power of appointment and removal. This power, like the veto power was accorded to the nineteenth century mayor in imitation of the powers of the President. Like the appointing powers of the President, furthermore, so far as the more important administrative posts in the city are concerned, the mayor's power of appointment was commonly limited by the requirement of confirmation, either by the upper chamber where the council was bicameral, or by the council as a whole where there was only one chamber. Whereas, however, the President's power of removal was accorded to him for independent exercise, the mayor, like the state Governor, commonly had to have the concurrence of the confirming authority for removals. The growth in the appointing and removal powers of the American mayor during the latter part of the nineteenth century has been very marked, not only in the number of officers who have been brought under that power, but also in the elimination, at least in the larger cities, of the requirement for confirmation of appointments and concurrence in removals. This last feature furnishes just another illustration of the futility of the check and balance theory as a working principle

of government. In the national Government, senatorial confirmation as regards the most important administrative posts has come to be largely a matter of form, while concurrence in removals, after one unfortunate period of experimentation, has been discarded. In the states where senatorial confirmation and concurrence have been an active factor in appointments and removals, they have proven most undesirable elements in party politics, and in the cities they have fostered controversies and "deals" to the utter demoralization of the administration and the confusion of the voter. The tendency, therefore, in recent years has been distinctly in the direction of increasing the administrative powers and responsibilities of the mayor so far as the appointment, removal, and consequently the direction of the higher administrative officers are concerned. As regards the subordinate positions in the city however, the spread of the civil-service merit system,[26] has tended to curtail the complete development of the administrative powers of the mayor in this regard.[27]

The Council.— The prevailing type of city council today is the unicameral one. It has already been pointed out that the imitation of the Federal scheme of governmental organization in the post-Revolutionary city charters went so far as to provide a bicameral council, and for a time that was the prevailing type in the larger cities. But in the last decades the tendency has been so distinctly

[26] See below, pp. 340, 341.

[27] For an embodiment of the best expert opinion at the close of the last century as to the powers that should be entrusted to the mayor under the mayor-and-council form, in order to cure the administrative evils from which American cities were suffering, see the municipal program or model charter adopted by the National Municipal League in 1900, the text of which may also be found in Deming, *Government of American Cities* (New York, 1909).

in the direction of substituting the unicameral for the bicameral system, even in those cities retaining the mayor-and-council form, that the bicameral type, though still fairly prevalent, is not only much less general than the unicameral form but is in a fair way to disappear, save as a historical remainder. Of the ten largest cities in the United States not one presents a bicameral council, though practically all of them operated under that type of council at one time.[28] It seems unnecessary, therefore, to devote any space to the consideration of a feature of council organization that was adopted without reason and has amply proved itself deserving of the censure which is rapidly throwing it into the discard of political experiments.

There is the greatest variation among city councils with regard to size. The bicameral councils usually comprise a larger membership than unicameral councils in cities of the same size. Indeed the tendency toward a reduction in the size of the council is scarcely less evident than the trend toward the single chambered council. The largest cities naturally have more members in the council, New York and Chicago, having seventy-three and seventy members, respectively. But the smaller cities show a relatively larger council in proportion to the population.

Originally our city councilors were selected altogether by wards, and that is the prevailing system to-day, both in England and in the American cities operating under the mayor-and-council plan. But the ward system of election came into disrepute in this country as one of the contributing causes in the decline in caliber of the city

[28] Of the 128 cities of more than 30,000 population operating under the mayor-and-council form in 1917 only 24 had the bicameral council, chiefly in Massachusetts, Rhode Island, and Virginia.

councilmen, a phenomenon that has been noted by every commentator on American city government. The reproduction in miniature of the congressional tactics of log-rolling for securing the benefits of expenditures for public works was undoubtedly one of the most serious of the ills under which our cities suffered during the darkest days of American city government immediately after the Civil War. The very term "ward politics" in its popularly accepted sense evidences the extent to which this evil made itself felt in city life. Therefore there has been a determined attack directed against the system of election by wards which has resulted in a modification of that system either by substitution of election at large or by a combination of the latter with the ward system. Entire abolition of the ward system is practically restricted, however, to cities adopting the commission or commission-manager form.

There are usually no special qualifications required for city councilor, beyond the customary ones of citizenship, residence, and majority required for the franchise, nor are ability or accomplishments apparently practical prerequisites to securing the office. In the matter of the type of men elected to city councils, American cities always suffer in a comparison with those of England, France, or Germany, as well as with the city councils of the earlier part of the last century in this country. The various explanations given of the decline in caliber of the American city councilors are interesting, but of more value are considerations of how the present condition can be remedied. It seems clear that the position of councilor in the typical American mayor-and-council city is distinctly less important and therefore less attractive than in England or in Germany. The domination of the party machine in municipal politics is also more

fully developed in the United States and tends to suppress independence of thought and action. It would seem, therefore, that to increase the importance of the council and to limit the control of party organization over it, would tend to make a post on the council more attractive to the desirable type of man. As these developments are, however, very difficult of attainment under the mayor-and-council type of city government, the question will be taken up again in connection with the consideration of the newer types of city organization. It may be noted in passing, however, that the caliber of the councilmen is apparently not closely related to the salary paid, at least the caliber does not improve as salaries increase. The European countries which are pointed to as having better municipal councils pay no salaries at all. In the United States the larger cities practically all pay salaries varying from $1,000 or less to $5,000,[29] and even in the smaller cities it is common to find a remuneration paid either in the shape of salary or of fees for attending council meetings. If salaries are paid, there will always be aspirants for the position who possess no qualifications commensurate with their desire for office. If no salaries are paid and considerable time is demanded by the duties of the office there is the objection that the financially weaker class are excluded from the position. But if the position of councilor, while made important because of the powers enjoyed by the council and the influence assured to the individual, could be relieved of time consuming details, it could be made at once attractive for the able public spirited man of whatever economic class, and forbidding to the professional officeholder who now looms so large in the membership of our city councils.

[29] In Philadelphia under the new charter.

The meetings of the city councils usually occur once a week, even in the smaller cities. The organization of the council is usually fixed in the charter or the laws; but in any case both the organization and the rules of procedure, which latter are commonly adopted by the council itself, are modeled very much on the lines followed in the state legislatures. The committee system plays an important part in the work of councils in the larger cities, though the committees have lost in importance in the council in much the same measure as the council has lost its former importance in the city government, since administrative functions were during the first part of the nineteenth century largely in the hands of the council committees.

The most striking thing about the powers of the council is, as has been suggested, their steady decline during the last century. The powers of the council under the mayor-and-council form may be classified, as were those of the mayor, as legislative, financial, and administrative. The legislative power includes the power to adopt by-laws or ordinances on matters put under the jurisdiction of the city. This power, which in large measure distinguishes city government from county government in this country, is shared by the council, as has been seen, with the mayor, whose veto may be overridden. The ordinance power, furthermore, is not as broad to-day as it formerly was because of the legislative practice of minute legislation on matters of special concern to the cities. It labors, also, under the disadvantage of the doctrine of strict construction applied by the courts, which still further restricts the scope of the ordinance power. Nevertheless, through its local exercise of the police power in the broad sense, the city council plays no purely titular rôle, and certainly what the council

legislation may lack in vital importance it makes up in volume, for the yearly output of ordinances in any of the larger cities is surprising. Important among the legislative powers of the council is the power to enact franchises for public-service corporations. This power was formerly very broad and presented in its exercise one of the most shocking of the abuses that crept into city government. Consequently it is now enjoyed within very definite limits only, constitutional or statutory provisions commonly prescribing the maximum term of franchises and governing the control of rates, while the action of the council in granting franchises must be ratified in an increasing number of instances by popular vote.

The financial powers of the council relate in the first place to the levying of taxes and the appropriation of moneys. These powers also are exercised under the strictest limitations, constitutional, legislative, and judicial. The kind of taxation, the amount, and the purposes for which it can be assessed are all fixed by constitution or by statute. In fact, since almost every city of importance in this country has reached the point where it needs to raise all the money allowed under the constitutional and statutory tax limits, the function of the council is largely restricted to a voice in determining how the available money shall be spent. We have already seen how the mayor shares in that fundamental function, and how he even threatens to reduce the importance of the council still further in this respect by the limitation of the latter to a right to decrease proposed expenditures. Similarly, the power to borrow money, originally entrusted to the city council with few restrictions, is now so circumscribed by constitutional debt limitations and statutory restrictions as to purposes and amounts and also usually by the requirement of adoption by popular vote of proposals

to issue bonds, that the council retains but a fraction of its former dominance even in this respect.

The administrative powers of the city council, once so important, have all but disappeared. Appointment by the council of city officials is ordinarily limited to a few posts, notably the city clerk, and the power of confirming appointments and concurring in removals by the mayor, is as we have seen not only discredited but disappearing, though still found in a considerable number of cities. Of course individual councilors may and often do exert a good deal of influence in matters of appointment and removal, but the council as such, which until about the middle of the last century appointed and removed the administrative officers and supervised their work directly through committees of its own, has now become distinctly a subordinate factor on the administrative side of city government.

The Administrative Departments.— Another characteristic of American city government during a part of the last century and still more or less prevalent to-day, though apparently definitely on the decline, is the separate administrative department, independent both of the council on the one hand and of the mayor on the other. We have the same phenomenon exhibited in our state governments and to such an extent that American political practice has been said to have added a fourth governmental branch to the time-honored trinity of legislative, executive, and judicial powers in the form of an administrative branch. When the city council began to be stripped of its powers over city administration, these powers were frequently entrusted to municipal administrative officers, commissions, or boards, who were chosen by popular election and hence were coördinate in a political way with the mayor and the council. However unsatisfactory administration by

council committees may have come to be, it is certain that no satisfactory system of administration could develop under the independent administrative department. For that reason the trend of informed opinion and of charter-revision practice as well is now distinctly in the direction of abandoning the independent administrative boards and centralizing the administrative control in the hands of the mayor by giving him the power of appointment and removal over the chief administrative officers. This development is by no means complete, for we still find numerous instances of independently elected authorities, such as health boards, park boards, library boards, etc., and most common of all school boards. The theoretical and practical considerations in favor of concentrating all administrative responsibility in place of scattering it among unrelated authorities are so convincing that one is surprised to find these violations of the recognized principle so general.

Aside from popular election and appointment by the mayor, we find still another method in vogue for selecting the administrative authorities for the city, namely appointment by state authorities. It will be remembered that appointment of the mayor by the central authorities was not uncommon early in the nineteenth century. One of the earliest instances of the abuse by state legislatures of their power over cities was the creation of boards or commissions for performing some special function in the city, the members of which were centrally appointed.[30] Both of these practices came quite commonly to be forbidden by constitutional provisions. But state appointment of municipal administrative authorities was not always for improper purposes. When conditions in the police departments of some cities became intolerable, the state has

[30] See McBain, *op. cit.*, pp. 45–48.

sometimes had to step in and appoint police heads, and in several of the largest cities in the country this is still the case to-day, though the practice has been abandoned in other cities where it was followed for a while. Central appointment of heads of municipal administrative departments in other branches, is also found to a limited degree, but as this method of selecting administrative authorities is extremely unpopular locally and has not shown, as a matter of fact, any marked advantages over local appointment in those cities where it has been tried, it is not likely to become a common method of selection.

Where the power of appointing department heads has been transferred to the mayor without the necessity of the council's confirmation, the discretion of the mayor is not ordinarily limited in any way, the usual civil-service rules and regulations expressly exempting department heads from their operation. There is a good deal to be said on both sides of the question as to whether the competitive examination principle can advantageously be applied to the higher administrative posts. The weight of opinion seems to be opposed to such an extension of the principle, but civil-service reform enthusiasts are inclined to favor such a development. At present, however, Boston almost alone of all large cities represents an interesting and unusual illustration of an attempt to limit the power of the mayor in appointing to the higher administrative posts, by insisting on special qualifications, the state civil-service commission having to assent to the selection as representing a candidate qualified by training or experience to fill the position. Even this, however, is not an application of the competitive examination principle.

Removals from the higher posts are usually made by the appointing authority. Here again the difficulty of

devising checks on the removal power which will not prove positive detriments to efficient administration has operated to leave the removal power unhampered in many cases.

In the manner of the composition of the chief administrative authorities American cities show no less striking variations than in the manner of their selection. Single officers, small commissions, large boards are all represented in the list of such authorities. At first the board or multi-headed administrative authority was the more prevalent and it is found very generally even to-day especially in such departments as health, education, parks, libraries, museums, recreation, etc. But the advantages of the commissioner or single headed type, not only in departments such as those for police and fire protection, but also in health administration and other departments, are becoming so generally recognized that the commissioner plan seems definitely to be supplanting the board plan.[31] The benefits of the deliberative aspects of board action might be retained by the use of advisory boards whose opinion, on the French principle, though it must be asked, need not bind the officer.

In the matter of salaries and term of office, there are, of course, the greatest variations among cities. But it may be said without serious danger of error that both salaries and terms are too meager to secure the best results. Although boards are quite frequently unpaid, which indeed is one of the arguments advanced in favor of the board type of organization, the chief official under the board who does the actual work of administration is usually handicapped by inadequate salary and uncertain tenure.

The number of administrative departments provided

[31] For the relative merits of the board and commissioner types of organization see Munro, *op. cit.*, pp. 252–257.

for each city will depend in a measure upon the size of the city, at least in practice the larger cities show a good many more departments than are found in the smaller cities. As a matter of fact, however, the multiplication of city departments beyond five or six main natural divisions of municipal functions is not only unnecessary but tends strongly to interfere with well coördinated administration. Even more serious, however, than the multiplicity of departments is the haphazard and unscientific distribution of functions among those that exist, which is characteristic of municipal organization in this country. As municipal administration has become more and more complex the evils of unscientific organization have made themselves felt more and more and a good deal more attention is now beginning to be paid in city charters to this important matter.[32]

Below the various administrative department heads come the subordinate officials and employees of the city. The combination of the spoils system and the marked expansion in the administrative activities of cities made the patronage in the larger cities a matter of vital concern to the political parties, with the result that positions in the city's service went largely to politicians or henchmen of politicians. As such conditions were intolerable and struck right at the heart of some of the most vital concerns of city dwellers, the movement for the introduction of the civil-service merit system into municipal administration has made rapid progress in American cities. In some states it is required by state law for certain municipal officials and in a large and continually growing number of cities it is being locally adopted. There are many serious and unanswered problems in connection with the ap-

[32] See the author's *Applied City Government* (New York, 1914), Chap. vi.

plication of the civil-service merit system which it is not possible to consider here.[33] In spite of all possible objections, however, it seems to be evident that our only hope for the development in this country of sound traditions and a controlling public opinion such as separates in England, without any legal restrictions, the municipal administrative posts from political manipulation is by means of some intermediary experience with civil-service merit rules intelligently and honestly observed. The annual growth of the civil service reform movement in American cities may be regarded, therefore, as promising a day of more efficient administration of municipal activities.[34]

Commission Government.[35] — There is no need of spending any time attempting a scientific definition of commission government, for authorities themselves do

[33] See the pamphlet by the author, "A Model Civil-Service Code for Texas Cities," University of Texas Bulletins, 1914.

[34] The literature of civil-service reform is so extensive that it is possible to mention here only a few of the more important references. Fish, *The Civil Service and the Patronage* (New York, 1905), is one of the best works on civil-service reform in this country, but contains little about cities. More recent and of great interest is Foulke, *Fighting the Spoilsman* (New York, 1919). The most valuable sources of information are the *Proceedings of the National Civil-Service Reform League,* and the monthly periodical *Good Government,* published by that organization. The reports of the United States Civil-Service Commission contain much interesting information, though not much about cities. The reports of the various civil-service commissions in cities are useful, and many articles are to be found in the political science journals.

[35] Out of the extensive literature brought forth within the last ten years on the commission form of government for cities the following may be noted as especially useful: Bradford, *Commission Government in American Cities* (New York, 1911); Woodruff, ed., *City Government by Commission* (New York, 1911); "Commission Government in American Cities," *Annals of the American Academy of Political and Social Science* (Philadelphia), November, 1911, revised in 1914 under the title of "Com-

not agree on exact definitions. But the essence of commission government as contrasted with the mayor-and-council form is easily stated. It consists in the union of legislative and administrative powers in the hands of a single governing body instead of the separation of powers and their distribution among legislative, executive, and administrative authorities. Other common characteristics of commission government will be noted a little later, but it is this fundamental departure from the basic theory on which the mayor-and-council plan was based which constitutes the real significance of the new movement begun in 1901.

Curiously enough this striking abandonment of a time honored shibboleth occurred not as the result of a growing conviction on the part of students of municipal government that the old theory should be discarded, for but a year or two before the establishment of the first instance of a city commission, the National Municipal League, one of the most influential and authoritative of reform associations concerned with city government, endorsed in its municipal program the mayor-and-council plan based on the strong mayor idea. The origin of commission government was an accidental, not a consciously directed occurrence. When the City of Galveston, Texas, was

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mission Government and the City-Manager Plan." A collection of commission government charters is to be found in Beard, ed., *A Loose-Leaf Digest of Short Ballot Charters* (New York, 1911). Bruere, *The New City Government* (New York, 1912), presents the results of a survey of ten commission governed cities, and a Census volume of 1916 makes a comparative financial study of typical commission governed cities with cities of approximately the same size operating under the mayor-and-council form. Pamphlet and periodical literature on the subject is now very extensive, to which references can be found in the books first mentioned, and in Munro, *Bibliography of Municipal Government* (Cambridge, 1915), as well as in the files of the political science journals, particularly the *National Municipal Review.*

swept in 1900 by a tropical storm that all but wiped out the city, the regular city government, inefficient in ordinary times, simply ceased to function. It was unable to meet the emergency and the business men of the city who were the most vitally concerned in rehabilitation requested that the affairs of the city be put by the legislature into the hands of a committee or commission of business men.

This action was at the time regarded as an emergency measure, for which precedents could be found in other states, notably in the action of the Tennessee legislature in 1878 in putting Memphis under a commission at the time of the yellow-fever epidemic. The first charter provided that three of the five commissioners should be appointed by the Governor, but the courts holding that this was contrary to a provision of the constitution requiring the local election of local officers, all five were subsequently made elective.

The new city government proved so satisfactory to the citizens of Galveston that even after the emergency caused by the storm was past there was no inclination to return to the old form which had been in every way unsatisfactory. It was the continuation of this new type in ordinary conditions, therefore, rather than its adoption to meet an emergency which challenged the attention of students of municipal government. The main feature of the Galveston plan, as it came to be called, was the election at large every two years of five commissioners in whom were concentrated the ordinance power, the financial powers, and the administrative powers of the city. One of the commissioners was to be elected mayor-president but with no independent administrative powers and no veto power. Each of the commissioners was put in charge, by action of the commission itself, of a special depart-

ment of administration for which he was responsible, but the commission as a whole was responsible, theoretically at least, for administration as well as legislation.

The commission plan proved so satisfactory in Galveston that other Texas cities soon applied for charters based on that plan, and in 1907 the new type of government made its appearance for the first time outside of Texas when Des Moines, Iowa, adopted a commission charter under a permissive statute of the same year. The Des Moines charter contained some new features, which although not originally part of the commission plan, have been so generally followed in later adoptions of the plan that they are sometimes considered as characteristics thereof. The features which Des Moines added to the essentials of the Galveston plan include the non-partisan elections, the initiative, the referendum, and the recall, the object of the last three of these features being to offset the concentration of all power in the hands of five men, which was believed to be dangerous. Provision was also made for the application of the civil-service merit system to the administrative service. Since 1907 the plan has spread with great rapidity to every part of the United States, especially in the home-rule charter states, until in the last few years it has been somewhat checked by the origin and development of the city-manager plan.

The merits of commission government are obvious, and the testimony as to its superiority over the old mayor-and-council form is overwhelming from the cities that have changed from the one to the other. The principle of concentrating responsibility and powers is too sound to be open to serious question. Of course commission government has not done all that its enthusiastic advocates claimed for it. But what has been accomplished is a sufficient vindication of the bold experiment begun twenty

years ago in Galveston. Instances of cities abandoning commission government and going back to the old form are so rare as to be noteworthy and the fact that where agitation for such a return does arise it is nearly always directly traceable to the old crowd of officeholders under the earlier form is perhaps as strong a testimonial as could be desired in favor of the new type.

Two characteristics of commission government, however, are especially worth noting, in view of the latest development in American city government, the city-manager plan. In the first place, the tendency has been to consider the commissioners primarily as administrators of their particular departments, so that the reëlection of a commissioner was most likely to turn on his record as head of the street, fire, police or other department, rather than on the record of the commission as a whole, though the latter in theory of law was ultimately responsible for administration as well as legislation. Consequently the commissioner devoted his time and energy chiefly to the conduct of his department, as that was the work for which he considered he was paid. Below him he might employ subordinate technical officials, but he directly supervised the details of administration. Consequently the public was inclined to choose a man because of his alleged or reputed efficiency in a particular field of administration, rather than because of his qualifications as a representative officer. This has proved to be the case quite generally even in those cities where commissioners are not directly elected to special posts, while in many cities this conception has been legalized by electing commissioners to special departments. We have then an illustration of the attempt to fill administrative posts requiring peculiar technical or professional qualifications by popular election. The futility of such an attempt is almost too obvious to

need comment, yet we have seen that it is characteristic of county government as well as of state government in this country, and in this country alone.

The other feature of commission government that has a direct bearing on the question of the significance of the city-manager plan lies in the fact that inasmuch as the entire administrative activity of the city is a whole and cannot be divided off into mutually independent departments there is need of a single administrative head, instead of a three or five headed administration such as the commission government provides. Multi-headed executives have not proven successful in the history of governments and even the relatively short annals of commission-government history can show unfortunate instances of interdepartmental rivalry and jealousies that have cost the city dear because there was no unifying head to compel coöperation. This weakness has been felt to a certain extent in many cities.

On the theoretical side, therefore, it may be said that commission government, in spite of its advance over the complicated and diffused mayor-and-council government presents two serious weaknesses namely in the attempt to elect technical administrative officers and in the failure to provide a centralized administrative system. It is a curious fact that the propagandists of commission government dwelt with insistence on the analogy between this new form of city government and private, corporate business organization. While they likened, with considerable reason, the city commissioners to the directors of a corporation, they failed to note that private corporations depend for their success quite as much, if indeed not more, on the president or general manager who has charge of carrying out the policies of the directors as on the directors themselves, and that the commission plan of gov-

ernment does not adopt that essential feature of private corporate organization.

One other consideration with regard to commission government is worth mentioning. Is commission government adapted to large cities, and if so how does it happen that none of the largest cities have turned to that type? Considering the second query first it may be noted in the first place that the largest cities in the United States are not as a rule free to adopt their own charters. In the second place the introduction of commission government has nearly always been opposed by the politicians in power under the old form, and the larger the city the more powerful is this opposition. Thirdly, the new form of government is spreading, as a matter of fact, to ever larger cities, and has been seriously considered in some of the cities of the first class. In answer to the first query it may be said that whatever is worth while in the principles upon which commission government operates is equally applicable to the larger and to the smaller cities. Simplification, concentration of responsibility, and consequently greater possibilities of citizen control are desiderata for the metropolis as well as for the hamlet, and to the extent that commission government offers these improvements over the old mayor-and-council form, to that extent is it adapted to all cities no matter what their size.

The City-Manager Plan.[36]— The city-manager plan, as has been stated, is a product of the last decade. Its beginnings seem to be found in an experiment inaugurated

[36] Two books dealing with the city-manager plan especially worth noting are Toulmin, *The City Manager* (New York, 1915), and Rightor, *The City Manager in Dayton* (New York, 1919). For discussions of the history and theory of the city-manager plan reference may be made to the author's *Applied City Government* (New York, 1914), and two pamphlets by the author in the University of Texas Bulletins, Municipal Research Series, entitled "A Model

by the city of Staunton, Virginia, in 1909, when by local ordinance the city government, then under the mayor-and-council form prescribed by the constitution, provided for an officer designated as manager. In 1911 the Board of Trade of Lockport, New York, presented to the legislature a charter law providing for the city-manager feature combined with commission organization. But the proposal failed of adoption and it remained for the city of Sumter, South Carolina, to inaugurate the first trial of the commission-manager plan, adopted in 1912 and put into effect on the first of January of the following year. In 1913 a dozen other cities adopted the new plan, chief among which was the city of Dayton, Ohio, which by reason of its size, 116,557 in 1910, and by reason of the publicity given to its charter, came to serve as the classic example of the commission-manager type.

The Dayton charter, whose adoption, like that of Galveston twelve years before, was aided by, if not entirely due to the disastrous flood of March, 1913, provided as the basis of its government a commission modeled on the accepted lines of commission government, namely five commissioners chosen at large on a non-partisan nomination and election system in whom all powers of local government were concentrated, the mayor having virtually no

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Charter for Texas Cities," 1913, and "What Is the City-Manager Plan?" 1915. The *New Municipal Program of the National Municipal League* (New York, 1919), contains a presentation and discussion of a city-manager model charter. A special volume of the *Annals of the American Academy of Political and Social Science,* entitled "Commission Government and the City-Manager Plan" (Philadelphia, 1914), contains material on the city-manager plan. Periodical and pamphlet literature on the city-manager plan is now very extensive, special reference being made to the publications of the National Short Ballot Organization, to the *National Municipal Review,* and to the *American City.* The Year Books of the City-Managers' Association contain much interesting material.

special powers except those of presiding at the meetings. The initiative, referendum, and recall were included on the accepted Des Moines model. The new feature of the manager was incorporated in the charter by provisions requiring the selection by the commission of a city manager in whose hands should be centralized the immediate control of the entire administration, the commission being expressly forbidden to interfere with the details of administration. The manager was made removable at any time by the commission, as well as subject to recall.[37] The manager was given the power of appointment and removal of all heads of departments and their immediate subordinates subject only to a charter requirement that the appointments must be on the basis of merit and fitness alone. All subordinate officials, except the city clerk, are appointed and removed by the manager also, but subject to the regulations of the civil-service board, which is chosen by the commission. In addition to his powers of appointment and removal, which insure to the manager the exercise of the power of control and direction over all departments, as directed by the charter, the manager is also designated by the charter as the authority to see that the laws and ordinances are enforced. Other important features of the Dayton charter are the provisions relating to the organization of departments, of which five were originally provided for, subject to alteration by the commission, and the financial provisions relating to the budget, the borrowing power, and accounting and purchasing methods. But these are not necessary features of

[37] This feature of the Dayton charter was an unfortunate violation of the principle of the complete and absolute responsibility of the manager to the commission alone, which has fortunately been followed in relatively few of the later commission-manager charters. See James, "Defects in the Dayton Charter," *National Municipal Review,* January, 1914, p. 95.

the manager plan nor are they restricted, of course, in their application to commission-manager cities.

This, in essence, constitutes the commission-manager form. It is well to point out here, however, that there are a number of so-called city-manager cities which do not operate under such a charter but in which an official known as the manager is provided by ordinance, either in connection with a commission or even, as originally in Staunton, in combination with the old mayor-and-council form. But as the weight of progressive opinion is all in favor of the commission-manager charter and most of the cities that have since adopted the city manager feature have followed the Sumter model, we may use the term city-manager plan as properly designating the combination of commission government with the manager feature.

As the spread of the commission-manager type of city government since 1912 has been even more rapid than was that of commission government in the first eight years of its history, and as a number of cities have changed from the commission form to the commission-manager form, it is well to recognize that this new type of city government has an importance greater than that indicated by considering merely the relatively small number of American cities that are now actually operating under it. Of considerable significance, furthermore, is the fact that the National Municipal League in its new Municipal Program of 1916 endorsed the commission-manager form and approved a model charter based on that principle.[38]

[38] As early as 1913 a committee of the League, on commission-government, endorsed the city-manager feature in combination with commission government and in the same year a committee on municipal program was appointed which reported the next year in favor of this general principle. The publicity given to the report of this committee and to the approval of the manager plan by the

In order to understand the relation between the commission-manager and its immediate predecessor, the commission form, it is only necessary to refer briefly to the discussion of the latter type given above. The advantages of commission government over the older form are retained. But the two principal weaknesses of commission government noted above, namely the selection of men for technical administrative duties by popular election instead of by appointment on the basis of special qualifications and the lack of administrative centralization are both cured by the manager plan. The manager, chosen because of expert qualifications and not because of vote-getting ability is the real head of the administration. Through his power of appointment and removal he can control the entire administrative machinery and insure that harmony in the administration which commission government did not provide. The commissioners, instead of being concerned with administrative details of which they are necessarily ignorant, are concerned only with the determination of general policies and the control of the manager who is completely responsible to them.

It is not possible here to go farther into a discussion of the theoretical advantages and objections to the city-manager plan. It may simply be pointed out that, unlike commission government, it applies as completely as possible to city government the principles of private corporate business management and that it is simply extending to city government as a whole the long established principles on which our public-school systems are so generally run, namely a general representative policy-determining board

League in 1915 served in no small measure to stimulate and direct the interest of municipal-reform bodies in the new movement even before the final publication of the report on 1916 and its appearance in book form in 1919 under the title of *A New Municipal Program.*

operating through an expert administrator, the superintendent. There is, therefore, nothing either untried or un-American in this latest type of city government. So far as practical experience throws any light on the subject, adopting the old adage that the proof of the pudding is in the eating, we may say that the overwhelming evidence so far is that it tastes decidedly good. Perhaps, to carry the figure of speech a little farther, it is too early to come to any conclusion as to how the pudding will be digested and assimilated. The chief danger lies, probably, in the tendency to make extravagant claims for this new departure and to forget that the fundamental conditions of an active and continuous citizen interest are as necessary for the success of one scheme of government as for another. If the city manager plan tends to arouse and sustain such an interest, it would therein alone justify its existence, and if in turn this interest can operate more effectively upon the manager type than upon the other types, it needs no further apology. Time alone will tell whether either or both of these possibilities will be permanently realized.

Municipal Courts [39]

The judicial organization of our cities is just as much a part of the American municipal system as is the judicial organization of the county a part of the county system. As such it deserves consideration in any discussion

[39] There is almost no mention in the literature of municipal government of the system of municipal courts. Goodnow, *City Government in the United States* (New York, 1904), pp. 204–214, devotes some space to this subject. Beard, *American City Government* (New York, 1912), discusses the police courts and some special courts, pp. 173–184, as does also Zueblin, *American Municipal Progress*, new edition (New York, 1916), pp. 149 ff. *The New Municipal Program* (New York, 1919), Chap. xiii, explains the provisions and purpose of the model act establishing a municipal

of municipal organization, no matter how brief, and yet most works on American city government are wholly silent on the subject. As a matter of fact county courts, as has been seen, are almost without exception concerned only with the application of state laws, while city courts are charged, on the criminal side at least, with the enforcement of local laws. They may be regarded, therefore, as local courts with more reason than the county courts.

The Development of Municipal Courts.— Originally, as has been noted in the chapter on the development of local government, the regular municipal officers acted also in a judicial capacity, the mayor, recorder, and aldermen functioning as justices singly and acting together as a borough or corporation court with a jurisdiction coördinate with that of the quarter sessions in general civil and criminal cases, as well as criminal jurisdiction over the violation of local ordinances. After the colonial period, however, these judicial functions came quite generally to be transferred to special judicial officers, either centrally appointed or selected by the council, the mayor and aldermen at first sharing judicial functions with these new officers and then losing their participation altogether, though the mayor continued for a long time, in some instances even up to the present, to occupy nominally the position of justice of the peace. The recorder tended to become a purely judicial officer and is found as such in many cities to-day.

The movement for popular election of officers extended to the judicial officers in the cities as well as in the counties and the petty judicial officers in the cities acquired or

court approved by the American Judicature Society and published as Bulletins IV A and IV B of that association. Dillon, *Law of Municipal Corporations,* fifth edition (Boston, 1911), devotes a chapter to municipal courts, Chap. viii.

retained the character of local officers in so far as their election occurred by the municipal directorate.

The Present Form of Municipal Courts.— To-day in the smaller cities justices of the peace usually continue to function as committing officers but in addtion there is usually also a local court, presided over by a recorder or magistrate and called recorder's court or corporation court or police court to try violations of municipal ordinances. In the larger cities misdemeanors under the state laws and the city ordinances are commonly tried by the police courts, presided over by so-called police justices or magistrates, who act also as examining and committing magistrates for more serious offenses, while a corporation court or municipal court or city court is frequently provided as a court of civil and criminal jurisdiction coordinate with the county courts or other lower courts of record provided in the judicial system of the state.

The administration of judicial police functions in the larger cities has been the subject of widespread criticism. Its importance to the city is obvious since effective action of the city police in preserving law and order is impossible under a lax or corrupt system of police magistrates. The worst examples of police corruption and graft have usually been found to be intimately connected with corrupt and controlled magistrates or police judges. Popular election of these judicial officers has properly been denounced as tending to further this unsatisfactory condition of affairs since it is found that usually the only element in the city's population interested in the candidates for election to these posts are the vicious and criminal elements, who therefore find it easy to select persons subservient to their interests. Appointment by the mayor is sometimes the method of selection, and in some states the police magistrates are appointed by the governor,

while in Virginia they are selected by joint action of the two houses of the legislature.

In so far as municipal magistrates and judges are concerned in trying violations of municipal ordinances they are really part of the local machinery of government and should be locally selected, though not by the process of popular election. But where they also constitute part of the state judicial machinery for the trial of cases involving state law, as is usually the case in larger cities, their ability and integrity are obviously matters of direct concern to the state at large. Local appointment with power of removal by central authorities would seem to provide a means of safe-guarding the interests of both the city and the state.

It is in the larger cities that the system of municipal courts, especially on the criminal side has proven most unsatisfactory. It is there also that some of the most interesting experiments have been undertaken in the field of judicial reform. This has occurred in the establishment of special courts, or rather special branches of the municipal courts in a number of the larger cities of the country. Among these may be mentioned the juvenile courts for special treatment of minors charged with misdemeanors or crimes, made famous by Judge Lindsey of Denver and now found in a large number of cities.

Night courts, for the trial of persons arrested at a late hour, as found in New York City, have proven their worth in giving a speedy trial to persons, many of whom are entitled to a discharge and who would otherwise have to spend the night in jail. The speeder's court, a branch of the Chicago municipal court, handles expeditiously and effectively the enormous number of violations of traffic laws.

Then there are domestic relations courts found in New

York City, Chicago, and other large cities, dealing with questions of desertion, non-support, and other family difficulties. Branch courts of arbitration and conciliation such as are found in New York, Chicago, Cleveland, and elsewhere accomplish in the civil field what the special courts mentioned above accomplish in the criminal field. Special kinds of cases are taken care of by judges who develop, if they do not have at the outset, a familiarity and grasp of the special problems involved. Justice is more certain and rapid, and regard for the law is developed in the citizenry.

The reform of the municipal courts in the largest cities is now receiving a great deal of attention. Chicago was the pioneer in securing what is known as the organized court, and Cleveland, New York, and other large cities have followed to varying degrees the same model. In 1919 Detroit reorganized her criminal court in a striking manner.[40] The American Judicature Society has published a model judicature act for a metropolitan district [41] which proposes a consolidation of all courts except appellate courts within the district into one court, divided into five main divisions based upon the nature of the business to be transacted. There are to be a chief justice and five presiding judges, one for each division, who together with an additional judge constitute a judicial council, which is the governing body of the court regulating practice and procedure and generally managing the business of the court and all divisions and branches. The chief justice is

[40] Harley, "Detroit Reforms Its Criminal Courts," *National Municipal Review*, June, 1920, p. 345.

[41] Bulletins IV A and IV B of the American Judicature Society, 1914. See also, Harley, "The Model Municipal Court," *National Municipal Review*, Vol. III, p. 57, and Harley, "Business Management for City Courts" in the *New Municipal Program* (New York, 1919).

the chief executive, subject to the approval of his management by a majority of the senior judges. These features are familiar aspects of judicial organization in European countries. The more interesting features of the act relate to the method of selecting the judges, aspects of the whole problem on which agreement could not be obtained. Four methods are suggested, therefore, as follows: appointment by the governor with removal by the legislature; reëlection of judges "on their records" without competition by putting on the ballots after the name of an incumbent the query "shall he be continued in office?"; appointment by the chief justice, who is to be elected for a short term, for a definite period with submission to a referendum at the end of that period as to his continuation; and appointment by the chief justice subject to removal by the legislature or by the judicial council.

It is not merely in the metropolitan cities, however, that greater attention should be paid to the question of judicial organization in the cities. One of the characteristic functions of the city is the exercise of the local police power and unless the judicial machinery provided for enforcing that power is properly manned and run this important power will be rendered largely nugatory.[42]

[42] For a brief description and criticism of the system of judicial administration in the cities of Illinois see Bulletin No. 10 prepared by the Illinois Legislative Reference Bureau for the Constitutional Convention, 1920.

CHAPTER VII

THE FUNCTIONS OF CITY GOVERNMENT[1]

The Legal Nature and Position of the City

The Powers of the City.— The American city, as has already been pointed out, is a public corporation enjoying the corporate powers characteristic of such bodies, such as the right to acquire, hold, and dispose of property, to sue and be sued, to enter into contracts for the performance of authorized functions, to have a corporate seal, and to enjoy the right of perpetual succession. These are powers that are ordinarily derived under the provisions of the law or the constitution that make cities bodies politic and corporate, and in some states the courts have derived still other powers from the corporate nature of cities, such as the right to borrow money or even to issue negotiable instruments of indebtedness. It must be remembered, however, that none of these powers is regarded as inherent in cities but that they, as well as all other powers exercised by cities, must be granted to them

[1] This chapter is largely adapted from the author's *Municipal Functions* (New York, 1917). Other works on this general subject include, Munro, *Principles and Methods of Municipal Administration* (New York, 1916); Zueblin, *American Municipal Progress*, second edition (New York, 1916); Fairlie, *Municipal Administration* (New York, 1901); and Beard, *American City Government* (New York, 1912). Of great value are the Census volumes dealing with general statistics of cities, and the annual volumes on financial statistics of cities having a population of over 30,000. References to special phases of municipal functions will be given under the appropriate discussions. Munro, *Bibliography of Municipal Government* (Cambridge, 1915), gives an exhaustive bibliography up to that date.

by the constitution or the laws, either by express terms or by fair implication from powers so granted as being essential to the declared objects and purposes of the corporation. In general the courts of the United States have applied the doctrine of strict construction to grants of powers to municipal corporations much as they have applied it to private corporations, especially where the powers claimed for cities might impose public burdens or affect the liberty or property of the individual.[2]

Not only, then, may the city exercise only such powers as have been clearly granted, but these powers, though once granted, may at any time be modified or taken away by the state, which means under our American constitutional law by the legislature, unless the constitutions protect cities in certain of their powers. In this respect cities are worse off than private corporations under our law, for while private corporate charters, though enacted by the legislatures, are viewed as contracts whose obligation cannot under the state and Federal prohibitions be impaired, municipal charters are laws and as such subject to amendment or repeal. Furthermore cities have been accorded the protection of the "due process of law" guarantee in the Federal Constitution in only a few instances and to very limited degree and have been regarded as quite without the scope of the provision in the Federal Constitution relating to the equal protection of the laws, both of which safeguards have been invoked to a greater or less extent by private corporations.[3]

As a result of these two fundamental characteristics of the position of the American city, namely the strict

[2] See Dillon, *Municipal Corporations*, Chap. vii.

[3] For a discussion of the application of the Federal guarantees enumerated above to the protection of cities see, McBain, *The Law and Practice of Municipal Home Rule*, pp. 17–28.

doctrine of express powers and the lack of any constitutional protection of the rights of cities, combined with the practice of the legislatures to grant powers in a limited and minute fashion there developed the situation, characteristic of the American system, that the city became completely the creature of the legislature. In England, it will be remembered, cities were incorporated, until the reforms of the nineteenth century, by the crown and enjoyed powers which could be legally taken away only by judicial process. It is true that with the complete ascendancy of the Parliament over the King the cities became subject in every way to the plenary power of the legislature and new powers were granted by legislation, while even incorporation of new boroughs though nominally performed by an act of the Crown, had, after the legislation of 1835, to be in accordance with the provisions determined by Parliament. But although English cities derive their powers to-day from the legislature, Parliament has followed the plan of extending powers in broad terms and has not attempted to exercise a minute control. In France, on the other hand, cities are operating under a general grant of power to regulate their own affairs, subject to limitations prescribed in the law. In both these countries, therefore, cities are not under the complete tutelage of the legislature as they came to be in the United States by the middle of the nineteenth century.

In order to remedy the unfortunate situation that grew out of the complete domination of cities by state legislatures and the exercise of that power for political purposes instead of for the welfare of the cities themselves, constitutional provisions came to be very generally adopted in the various states to limit the power of control of the legislature. We have already seen what some of these were that related specifically to the matter of the organ-

ization of city government.[4] We will now consider briefly what limitations came to be adopted with regard to the control over the functions or activities of cities.

Legislative Control over Municipalities.— In the first place it is to be remarked again that many of the earlier provisions in state constitutions with regard to municipal organization, were not consciously intended as limitations upon the power of the legislature, but were either incorporated without much reason in imitation of provisions found in other constitutions, or in some cases were intended rather as restrictions upon the cities themselves than upon the legislative power over them. Some of the provisions, even of those antedating the prohibition on local or special laws in the Illinois Constitution of 1870, which, as has been seen, was perhaps the earliest instance of the adoption of such a provision for the express purpose of limiting legislative power over cities, were, however, apparently directed against legislative abuses of power. For the most part, however, these have not proven very effective safe-guards for cities.[5] Among such specific limitations may be mentioned prohibitions on the imposition of local taxes by the legislature; prohibitions on the authorization of local taxes for other than corporate purposes; limitations on the amount of taxation or indebtedness that cities could be authorized to incur; prohibitions on aiding public-service corporations by grants of money or extension of credit; prohibitions on legislative interference with the city's streets; and prohibitions on the legislative grant of franchise rights in the streets of a city.

More comprehensive limitations on legislative abuses resulted from the prohibition on special legislation for

[4] See Chap. vi above, pp. 304 ff.

[5] See, McBain, *op. cit.*, Chap. ii.

cities which, as has been noted, began in Ohio in 1851, and then spread to a majority of the other states as well. Even this limitation, as has already been pointed out, was very largely evaded by the device of minute classification and in other ways, and when not in practice modified, it often proved to be unsatisfactory as insisting upon uniformity in matters where uniformity was not altogether desirable. The chief value of this limitation to cities lay in the fact that when the legislature was unable to deal specifically with a single city in the interests of local or state politics, it hesitated to enact obnoxious laws applicable to all cities in the state or in the particular class.[6]

Then came the home-rule charter movement, the origin and spread of which has already been considered in connection with the discussion of the power of cities in the home-rule charter states to determine their own framework of government. While, as has been pointed out, there can be little danger in theory, as there has been little hesitation in practice in giving cities a large amount of freedom in deciding upon the particular form of machinery they wish to use for the accomplishment of municipal functions, both theory and practice present very distinct limitations on the extent to which it is possible or expedient to give cities complete control over the determination of the character and extent of powers which they may exercise. For while the form of city government was not likely to be a matter of vital concern to the state as a whole as distinguished from the city, the powers of the city government might well be. Hence the so-called home-rule provisions either made the exercise of the charter-making power subject to other constitutional restrictions on cities or to general laws, whether adopted or passed before or

[6] Dillon, *op. cit.*, Chap. v, discusses constitutional prohibitions on special legislation.

after the local action, or the courts themselves tended to restrict the freedom of the cities to the uncontrolled exercise over matters of "local" concern only. In the determination of the fundamental question as to what are matters of local as distinguished from general or state concern the courts have experienced the greatest difficulty, and small wonder, since it is a question incapable of logical or exact determination. Among the more important activities in connection with which the freedom of home-rule cities from control by general constitutional or statutory provisions has been considered by the courts are such diverse and fundamental activities as the taxing power, the exercise of the police power, the regulation of elections, the control of public utilities, the exercise of the power of eminent domain, the creation of municipal courts, the annexation of territory, the control of public education, the ownership and operation of public utilities, and a large variety of other functions.

The wording of the constitutional home-rule provisions themselves as well as of the enabling acts passed in execution thereof and the diverging opinions of the courts as to the proper application of the home-rule idea have made it almost impossible to derive any general conclusions as to the significance of home-rule powers from the examination of the whole subject. Even within a single state the judicial interpretation of the constitutional provisions has more frequently than not been either obscure or full of contradictions. But this much is apparent that neither constitution framers nor legislative or judicial interpreters have been willing to recognize the propriety of setting up cities in the position of an *imperium in imperio* as regards their independence from legislative control in matters that are regarded as involving the interests of the state as well as those of the cities.

Perhaps the best expression of authoritative opinion on this difficult question of how far cities may properly be assured a scope of action free from legislative control may be found in the model constitutional provisions for municipal home-rule contained in the *New Municipal Program* of the National Municipal League.[7] Under the head of powers this draft provides that each city shall have the authority to exercise *all powers relating to municipal affairs,* a constitutional expression of the principle on which powers are commonly delegated to cities in continental Europe by the legislatures. This broad grant, which it will be noticed does not specify what is meant by municipal affairs and, therefore, leaves the interpretation of the phrase to the courts again, is then modified by the reciprocal provision that *in matters relating to state affairs* the power of the legislature to enact laws applicable alike to all cities in the state shall not be deemed to be restricted or limited by the general grant of authority to cities.

Then for greater certainty the draft enumerates certain powers which shall be deemed to be part of the powers conferred upon cities, including the levying, assessing, and collecting of taxes and the borrowing of money *within limits prescribed by general laws;* the levying and collecting of special assessments for benefits conferred; the furnishing of all local public services; the purchase, hire, construction, ownership, maintenance, operation, or lease of local public utilities, and the acquisition of property within or without the corporate limits for such purposes; the grant of local public utility franchises and the regulation of their exercise; the making of local improvements and the acquisition of property necessary for such im-

[7] *A New Municipal Program,* Woodruff, editor (New York, 1919), pp. 302–307.

provements, combined with the power of excess condemnation and the right to dispose of the excess under restrictions to protect and preserve the improvements; the issuance and sale of bonds on the security of property or public utilities owned by the city; the organization and administration of public schools and libraries, subject to the general laws establishing a standard of education for the state, and the adoption of enforcement within their limits of local police, sanitary, and other similar regulations not in conflict with general laws. This enumeration is expressly declared not to be deemed to limit or restrict the general grant of all powers relating to municipal affairs.

It is obvious that these constitutional provisions do not preclude the possibility of uncertainty as to the right of cities to exercise any particular power not included under the rather broad enumeration, but at least it is of value as showing what sort of powers are regarded as being so clearly of primarily local concern that cities should by the constitution be guaranteed the right to exercise them, subject in specified instances to the control of the legislature exercised by general law. As a matter of fact the powers specifically enumerated represent for the most part powers that are actually exercised by cities to a greater or less extent by legislative authorization in many states in which there are no constitutional provisions in favor of the city's powers, except perhaps such general provisions as the prohibition against special legislation. The extent to which these powers actually have been exercised by cities will be considered in some detail later on.

The Liability of Cities.— Powers are not, however, the only attributes of cities. There are also responsibilities. Indeed the very grant of a power may itself involve a responsibility or a duty, since the exercise of the power

may be made mandatory or compulsory. These mandatory obligations upon cities have constituted at various times and in particular cities one of the most serious of the abuses of legislative supremacy over cities, unless and until forbidden by constitutional restrictions. But even when the power to impose governmental obligations and financial burdens upon individual cities was more or less completely eliminated, the continuing power of the legislature to charge all cities, or all cities within permitted classes, with mandatory powers has constituted an ever increasing burden upon them, especially as the imposition of such obligations has not always been accompanied by the grant of enlarged financial powers to meet them. As a consequence, of course, the actual freedom of the cities to undertake permissive functions has been correspondingly restricted.

Apart, however, from these responsibilities expressly imposed by law, cities are also subject to liabilities flowing from their character as corporations.[8] In the first place, it may be pointed out that cities as public corporations can be sued in contract on practically the same conditions as private corporations. Therein lies a fundamental distinction, recognized in England and the United States but not generally in the continental European countries, between the city as a subordinate corporate governmental agency, and the state as sovereign. The latter is not regarded as subject to suit in contract except by its own consent, while the former is liable on a contractual basis without express legal authorization.[9]

[8] For a discussion of the legal liabilities of cities see Dillon, *Law of Municipal Corporations,* fifth edition (Boston, 1911), Chap. xxxii.

[9] The liability of the public corporation to suit is frequently spoken of as a right in the familiar phrase which enumerates among the attributes of such corporations the right to *sue and be*

Furthermore, the city as a municipal corporation is liable in tort for the negligent acts of its agents in certain cases, a liability which is not recognized as attaching to the state by common law, and which, unlike contractual liability, our state and national governments have not been disposed to assume. The decisions with regard to the extent of the liability of municipal corporations in tort are so conflicting that it is difficult to state any general principle which will not be subject to modification and exceptions, but in general it is based on a distinction between so-called governmental functions and so-called proprietary functions. The former comprise the acts which the city performs *qua* sovereign, the latter are the acts which do not necessarily involve governmental power but are capable of performance by a private corporation or individual as well as by governmental agencies. In the performance of its governmental functions the city is not liable for the torts, that is the wrongful acts, omissions, or carelessness of its agents, while in the performance of its proprietary functions it is so liable. The line between the two classes of acts is not easy to draw on the basis of the cases, but among governmental acts are included the exercise of the ordinance power by the city, the administration of police, fire, and public-health protection, the conduct of the schools, etc. Proprietary functions on the

sued. It can only be regarded as a right, however, when viewed from the standpoint of the individual members of the corporation, for by the assumption of the corporate character the individual liability of the citizens is supplanted by the collective liability of the corporation. It will be remembered that before corporate capacity was conferred upon the New England town the common law held that the property of any inhabitant could be taken in execution of a judgment against the town, the English law being the same with regard to the administrative subdivisions, other than borough. See Goodnow, *Comparative Administrative Law,* pp. 171, 172.

other hand, include such activities as the operation of public utilities and the care of the city streets. The element of profit is not the criterion, therefore, by which a proprietary function is judged. The tendency, moreover, seems to be in the direction of extending the liability of the city to care for its property to something like that of the owners of private property, without reference to the use to which it is put.

Of course, liability for damages caused by the acts of its agents even in the performance of governmental functions can be imposed by law upon the city, and that has sometimes been done. On the other hand the common-law liability of municipal corporations in the performance of proprietary functions by its agents can be restricted in the same way, and that also is not uncommon. Particularly serious to the public treasury is the liability of the city to keep its streets in repair, for thousands of damage suits are brought each year for injuries alleged to have resulted from defects in streets and side-walks. The ease with which fraudulent suits of this kind can be brought and successfully maintained has led in some cases to relieving cities from this liability by law. It is sometimes urged, moreover, that the non-liability of cities for the acts of its agents in the performance of governmental functions is justifiable on the ground that it would prove too costly to penalize cities under a system of popular government for the lapses from efficiency of its agents engaged in activities from which the city derives no profit.[10] It would seem evident, however, that justice would demand that the damages resulting from such lapses should be shared by members of the corporation as a whole and not saddled upon the unfortunate individual who without means of protecting himself is injured

[10] See Munro, *The Government of American Cities*, p. 94.

in body or property by the wrongful or careless performance of the city's agents.

The city ordinarily exercises its local powers in the first instance through the enactment of ordinances which are then put into execution by its executive and administrative officers. Even this ordinance power, however, limited as it has been seen to be by the doctrine of strict construction, is subject to certain well recognized restrictions in the manner of its exercise.[11] In the first place, of course, the provisions of the Federal Constitution which limit the powers of states with regard to impairment of contract obligations, the deprivation of property without due process of law, the denial of the equal protection of the laws, etc., apply equally to the cities, for the state obviously cannot authorize a subordinate agency to do what the state itself is forbidden to do. In the same way the provisions of the state constitutions safeguarding individual rights constitute equally effective limitations on the exercise of the ordinance power by cities. In addition, however, to these fundamental limitations, cities are still further restricted in the exercise of the ordinance power, for municipal ordinances will in some cases be held invalid where similar legislative acts would be upheld. So municipal ordinances involving restrictions upon individual liberty or property must be reasonable, that is they must not be oppressive, that is interfere more than is necessary to accomplish a legitimate end, nor unduly restrain trade as by granting monopoly rights. Finally also, ordinances must be passed in accordance with the formalities prescribed by statute or by charter else they will not be upheld. It sufficiently appears from the foregoing how much American cities are hedged about in the exercise of their powers.

[11] See Dillon, *Municipal Corporations,* Chaps. xv and xvi.

Municipal Functions in General

The Development of Municipal Functions.— It will will be remembered how limited were the functions performed by American cities up to the close of the eighteenth century.[12] Cities were small, it is true, but their activities were very much less extensive than those undertaken as a rule by cities of even smaller population to-day. Indeed, striking as has been the growth in the number and size of American cities during the last century, the expansion of their activities has been more remarkable still. At the beginning of the nineteenth century professional uniformed police forces were unknown,[13] constables and nightwatchmen continuing to play their ancient and ineffective rôle even in the largest cities until towards the middle of the century. Professional fire departments were also unknown until about the same period, the old bucket brigades and volunteer companies continuing to do duty in cities of a size that would to-day never dream of relying on that expensive, because inefficient, system of protection. Health boards and health officers appeared fairly early in the century in the seaport towns, but their function was largely restricted to measures to combat the introduction of the plague, cholera, and other contagious diseases from foreign lands. Scientific public-health administration as a municipal function is a development rather of the twentieth than of the nineteenth century. Education was probably the most advanced of municipal functions, though of course measured by modern standards it was pitifully rudimentary, both as regards the number of persons reached, and the character and extent of the instruction offered. Poor relief as a municipal

[12] See above, Chap. ii.

[13] These were not introduced in England either until 1829.

function was almost unknown, the county being, as has been seen, the normal poor-relief area, save in New England. In the field of public works there was a similar deficiency. Street paving was limited in extent and poor in quality, the old wooden planking and the rough cobble stones representing the last word in this field. Not until after the middle of the century did marked improvements in the character of pavements make their appearance and not until much later did cities generally recognize an obligation to do more than pave the main streets. Street lighting was a ludicrous affair of lanterns, illuminating gas having just been invented and being unknown in American cities. But even after the development of that agency it was many years before American cities undertook to provide adequate street-lighting systems, the manufacture and distribution of gas and later of electric light, depending almost entirely on private enterprise in this country. Sewer systems were practically unknown to American cities and did not develop as general municipal undertakings until towards the end of the century. Sewage disposal plants were not dreamed of for three-quarters of a century. Even the fundamental service of a public water supply was virtually limited to the sinking and care of public wells and pumps. To-day the smallest cities strive to furnish a plentiful supply of pure water to every household. Other public utilities were practically unknown and when introduced were, except in the field of water supply, rarely undertaken by the city directly.

The phenomenal increase in municipal activities can perhaps best be illustrated by a comparison of the *per capita* expenditures of New York City in 1810, having a population of about a hundred thousand persons, with the expenditures of cities of that size to-day. On this basis

New York City a hundred years ago was spending annually about a dollar *per capita* for all municipal purposes, while in 1916 Springfield, Massachusetts, with an estimated population of 103,000 showed a *per capita* of total expenditures of more than $75.00. Even when the decreased purchasing power of the dollar in 1916 as compared with its value a hundred years ago is taken into consideration, the discrepancy is still sufficiently remarkable as an evidence of the expansion of municipal activities during that period.

Another feature of the development of municipal functions that merits consideration is the shifting emphasis placed upon the kind of activities that cities engage in. At the outset, it will be remembered, cities were conceived of as governmental corporations for the satisfaction primarily if not wholly of distinctly local needs. In fact therein lay the principal distinction between the urban units of government and the counties, the latter being regarded in law and in practice as administrative units for the convenient administration of matters of state or central government. But the increasingly mandatory character of powers granted to cities and the direct obligations imposed upon them in connection with the performance of services for the general government resulted in the cities being more and more charged with matters of state concern. At the same time the practice of state legislatures already referred to of establishing centrally appointed commissions for the performance of functions formerly entrusted to local officials or of new activities in and for the locality resulted in the diminution of the control of the city over what might naturally be regarded as activities for the satisfaction of local needs. Coupled with all this has come the recent development of state administrative control over certain classes of local activi-

ties which has still further limited the field of independent municipal action.

It is consequently a matter of great difficulty, if not indeed an impossibility, to make a clear classification of the activities engaged in by cities on the basis of state and municipal functions. Some municipal activities such as the police administration which is concerned with the enforcement of state laws are clearly of the greatest concern to the state as a whole. Others, such as the provision of certain municipal public utilities, seem to be almost wholly a matter of local concern. Increasing congestion of population, however, and the development of transporation of persons and commodities has tended continually to emphasize the interests of the state as a whole in almost every activity of the city. So for instance, the preservation of decent health standards within a given city is no longer a matter in which the city alone is concerned, for a single city may become the focus of infection for the entire state. So also the disposal of the sewage of a city may involve the welfare of all cities located further down on the same watershed. Again, where cities are crowded together it may not be possible to leave each city free to acquire its own source of water supply without endangering the interests of other cities forced by their location to rely on the same supply. Even the conditions of the principal streets in a city may, in these days of increasing motor traffic and transportation, involve inconvenience and loss to other communities located on highways that pass through the city. These examples will suffice to illustrate the point that very few if any of the modern city's undertakings can to-day be regarded as having merely a local significance.

The importance of the city as a governmental agency in the United States may best be realized from a compari-

son of the *per capita* expenditures of cities with those of the counties, the states, and the nation. In 1913, a year for which comparative figures are available and which may be taken as reflecting normal conditions for the period just prior to the World War, the *per capita* governmental cost [14] in 146 of the cities of the United States with a population of more than 30,000 amounted to $32.46. For the same year the *per capita* governmental cost payments for all counties amounted to $4.49, and the *per capita* governmental cost payments for the Federal government amounted to $10.15. For the same year the total *per capita* expenditures [15] of the states amounted to approximately $5.00. In other words the *per capita* governmental cost payments in cities [16] amounted in that year to more than half as much again as the total *per capita* governmental cost payments in counties, states, and nation combined. When in connection with this significant comparison the further fact is kept in mind that municipal indebtedness and consequently payments on debt obligations also show a much larger *per capita* figure than is found in the case of the other governmental units, the relative significance of the cities as governmental agen-

[14] Including expenses, interest, and outlays.

[15] The *American Year Book* for 1913 gives the available figures for total expenditures of states, which are, of course, greater than the governmental cost payments, as they include such items as payments for the redemption of debt obligations. But as these are relatively of much less importance than in the cities, the difference between total expenditures and governmental cost payments will not be as great as it would be in the case of the local governments.

[16] This assumes that the *per capita* cost payments in the 146 cities considered are fairly typical of such figures for cities as a whole. As a matter of fact, however, the Census figures show that the *per capita* governmental cost payments in general increase with the size of the city, that is expenditures increase more rapidly than population. Hence these figures must be taken to represent the situation in cities of more than 30,000 inhabitants only.

cies is still further emphasized. Moreover in the ten years from 1903 to 1913 the *per capita* governmental cost payments in these cities increased from $24.64 to $32.46, or nearly 33 per cent.

The variety of undertakings for which cities expend such enormous sums [17] is clearly shown by the divisions adopted by the Census Bureau for listing the payments. In addition to the expenses of public-service enterprises, expenses of general departments are listed under ten main heads as follows: General Government; Protection to Persons and Property; Conservation of Health; Sanitation or Promotion of Cleanliness; Highways; Charities, Hospitals, and Corrections; Education; Recreation; Miscellaneous; and General. Each of these is in turn subdivided and statistics are given for no less than eighty-seven distinct objects of expenditures. But for purposes of brief consideration the main activities of cities may conveniently be grouped under the following main heads: Public Safety; Public Health; Public Education; Social Welfare; Public Works; Public Utilities; and City Planning; while at the basis of them all stands the matter of Municipal Finances.

Public Safety.— Under the head of the activities of the city directed towards the preservation of public safety the two main divisions are the police and fire departments, which in many of the larger cities constitute separate departments of the city government, though in many of the commission governed cities these are united in a single department of public safety.

The Police Department.— Since the functions of the police department [18] in preserving order and protecting

[17] The total payments of the 213 cities with populations of more than 30,000 in 1916 amounted to more than $2,000,000,000.

[18] See Fuld, *Police Administration* (New York, 1910); McAdoo,

persons and property are fundamental and are among the powers entrusted almost universally to cities, this constitutes an important part of the activity of every city, except in those relatively rare instances where the state conducts this work through its own officers, and even there the burden is borne by the taxpayers of the municipality. The percentage of the total governmental cost payments devoted to the police department increase in general with the size of the city. For the cities of more than 30,000 population in 1917 the average percentage for this purpose was approximately 11 per cent [19] of the expenses of general departments. But the population of the city is not the only important factor in determining the proper size of the police force, as the area of the city and the character of the population are also of appreciable importance, while the policy of a particular city as to the salaries paid will influence, of course, the amount expended, as much as the mere question of the number of men employed on the force.

The most characteristic function of the police force of a city is the patrolling of the streets, which is both a preventative and a remedial function. One measure of the efficiency of a police department is to be found in the number of crimes of violence that are committed upon the persons and property of citizens, since such crimes can be safely committed only if the patrolling force is so inadequate as to make the arrest of the offenders unlikely.

Guarding a Great City (New York, 1906), Fosdick, *American Police Systems* (New York, 1920); and on European Police, Fosdick, *European Police Systems* (New York, 1906).

[19] The statistics herein considered are in general taken from the Census volume on *Financial Statistics of Cities* for 1917, that year's figures being chosen rather than the latest figures because they represent the conditions just prior to the abnormal situation caused by the entry of the United States into the World War.

But the patrolling of the city as a safeguard against crime is not the only function of the police force. The apprehension of offenders who are not caught red-handed is another important activity of the police force, usually entrusted to a special branch of the force known as the detective force. Then there is the enforcement of traffic regulations which, with the increasing use of motor vehicles, is becoming a steadily more important police activity, and commonly entrusted also to a special branch of the police force known as the traffic squad. The enforcement of laws against gambling, intoxicating liquors, and prostitution constitutes another important police activity and one which has been the source of most of the police corruption under which American cities have so frequently suffered. This function is not usually entrusted to the regular police forces in European cities, and there is a tendency in the United States to take the last mentioned subject out of the hands of the regular patrolling force and employ a specially trained force known in some cities as morals officers under permanent morals commissions. In this connection also the increased employment of police women to protect girls and to enforce the laws against prostitution is worthy of mention. Finally the police force is of great importance in quieting disturbances in connection with mobs and riots.

The organization of the municipal police force is practically everywhere on a military basis with a chief of police at the head, and captains, lieutenants, sergeants and corporals as subordinate officers above the patrolmen. In larger places the city is divided into precincts or districts with a police station in each and a subordinate officer in control. The military features of the police force have been adopted from Europe where the police were regu-

larly organized on the military basis. But the adoption of the military organization and particularly the employment of distinctive uniforms was at first strenuously opposed in England and the United States as smacking too much of militarism.

For a time it was not uncommon to find police boards in American cities in charge of this branch of city administration. But the necessity of centralization of control in the hands of a single person for a function like that of the police department has come to be so clearly recognized that the almost universal practice is to have a single official directly in charge. There is less agreement both in practice and in theory, however, as to relative value of commissioners or heads of police departments who have been taken from the service itself and those who are taken from the outside. From the point of view of technical knowledge of the chief, and also from the point of view of the *esprit de corps* of the force, there is a good deal to be said for the professional head. On the other hand the continual need for the exercise of tact and judgment in the performance of the duties of the police department make it extremely desirable that ultimate authority be lodged in a man who is sympathetic with the point of view of the public, rather than limited by the naturally narrow horizon of the force itself.

In an increasing number of cities the principles of the merit system of appointment, promotion, discipline, and removal are being applied to the police departments, though the absolute necessity of complete disciplinary control in this branch of the municipal service tends somewhat to limit the extent to which the discretion of the responsible head can advantageously be diminished in the matter of discipline and removal. In this field of the municipal service, as also in the fire departments, pen-

sions are more commonly provided than in other fields.[20] The question of the organization of policemen into unions affiliated with outside labor bodies and the right of the policemen to strike has recently become an issue in a dramatic way in Boston, where the police are subject to state control. According to a recent compilation there were in 1919 thirty-seven cities whose police were unionized in affiliation with the American Federation of Labor.[21] Finally there may be emphasized again the vital connection between police efficiency and the police or magistrates courts in cities, which has already been pointed out.[22]

It is a curious fact in connection with police administration that although there is perhaps no branch of municipal activity in which the state as a whole has a more immediate interest, the state has rarely attempted to safeguard this interest in an effective way. The police force of the city is not concerned wholly or even chiefly with the enforcement of local police ordinances. It is the agency upon which the state depends almost altogether for the enforcement of the general criminal laws within the city. If the local police force fails to function in this direction, the state laws are simply ignored, for while the sheriff of the county in which the city is located may have the power and the obligation to prevent violations of state law and to arrest the offenders, it is a matter of virtual impossibility for him to do so effectively in any city

[20] All but two of the twenty-one cities with more than 300,000 in 1917 showed expenditures for police pensions as did also all but eight of the forty-five cities with a population between 100,000 and 300,000. In the smaller population groups such items were less general, but two-thirds of the sixty-one cities of the population groups from 50,000 to 100,000 and considerably half of those between 30,000 and 50,000 reported expenditures under this head.

[21] *The American Year Book*, 1919, p. 253.

[22] See above, pp. 353, 354.

of considerable size. So far as the generally objectionable crimes are concerned the local interest of the citizens may normally be counted upon to insist on adequate protection to persons and property. But in this country a great many state laws make actions punishable which in the minds of city dwellers are not generally regarded as reprehensible. This is particularly true of laws setting up standards of morality and making punishable such activities as gambling, Sunday amusements, the liquor traffic, the showing of questionable exhibitions, and prostitution. Where, as has been the case in many instances, local sentiment approves of or at least condones activities prohibited by state law, the local police force, by simply not enforcing the laws in question can and does render the state law nugatory. Such a situation, of course, strikes directly at the sovereignty of the state, and while the most obvious solution would seem to be for the state to refrain from attempting to impose its own more or less rural code of morals on cities, as long as it insists on doing so there is a very real danger involved in the disregard for all law which such a condition engenders and which is frequently considered as something distinctively American. And yet the other possible remedy of giving to the state a sufficient control over the police forces of cities to insure their enforcement of all state laws has been tried in only a relatively few instances and has not been signally successful. It is found in only three or four of the largest American cities to-day.[23] Perhaps the English system of affording considerable financial aid to cities that meet a reasonable standard of police efficiency might prove to be a more satisfactory way out of the dilemma, since direct state administration which is the rule in continental European countries seems

[23] Boston, St. Louis, and Baltimore.

to be so distasteful to American cities as to render its adoption in this country inexpedient.

The Fire Department.—Fire departments are found in all cities of more than 30,000 population and in a large number of cities below that size, though in the smaller cities volunteer departments are relied upon to a considerable extent to supplement the work of a small regular force, or even in the smallest cities almost completely.

The organization of the fire department in the larger cities is along similar lines to that found in police departments, namely on the military model with a chief at the head and captains in charge of the individual stations, and a distinguishing uniform for its members.[24] Somewhat the same problems of organization arise in connection with the fire department that are encountered in the case of the police department. The question of the board versus the single-commissioner form of department head, the qualifications requisite for the responsible head, the method of selecting, controlling, and discharging the personnel, and the one- or two-platoon plan of organization are all matters of great importance in the fire department, though the absence of close contact with the corrupting forces of vice and crime have not subjected our fire departments to the same demoralizing influences that have been at work on the police departments. Similarly the immediate interest of the state at large in the efficiency of fire departments is not as great as it has been seen to be in connection with the police department.

In point of efficiency of the fire-fighting force, and particularly in the matter of technical equipment, American cities as a rule appear to be in advance of European cities.

[24] An interesting description of the organization of the fire department in a large city may be found in Croker, *Fire Prevention* (New York, 1912).

Certainly as regards the relative importance of the municipal expenditures for the fire departments American cities show an appreciation of the necessity of adequate protection.[25] As compared with European cities American cities spend approximately eight times as much *per capita* in maintaining fire departments. But there is another side to the picture. With all this enormous expenditure the annual fire loss in American cities is more than eight times as great as in European cities. The explanation of this astonishing discrepancy lies simply in the fact that in Europe chief emphasis is placed upon fire prevention whereas American cities have been chiefly concerned with providing men and equipment for fighting fires after they occur. In recent years, however, more attention is being devoted to the preventive side in this country also.[26] By the enforcement of building regulations with a thorough and continuous inspection, by the elimination of fire risk due to the accumulation of combustible materials, and above all by a campaign of education directed towards the suppression of individual carelessness, which occasions the greatest loss of life and property, the city government can do a great deal more towards reducing the fire loss than could ever be done by the maintenance of the most efficient fire-fighting force and equipment imaginable. In this work of fire prevention the state can be of great help through the aid of a central fire prevention bureau

[25] In 1917 the governmental cost payments for fire departments in the cities of more than 30,000 population averaged nearly nine per cent of the total expenses of general departments.

[26] The literature of fire prevention in this country is now very extensive, though practically all the product of the last ten years. In addition to the work of Croker on *Fire Prevention*, already referred to, there may be mentioned especially Freitag, *Fire Prevention and Fire Protection as Applied to Building Construction* (New York, 1912), and the publications of the National Board of Fire Underwriters and of the National Fire Protection Association.

to coöperate with the local governments without interfering directly in the organization and management of the fire departments.

Public Health.[27] — In some respects the public-health problem may be regarded as distinctively a city problem, though by no means exclusively so. In a large sense public-health protection is, of course, merely a part of the general function of protection to person and property, and it is included within the concept of the police power as very generally conferred upon cities. But its problems are sufficiently technical and its mode of functioning sufficiently distinctive to justify its being entrusted to a special branch of municipal administration, which has been done, as a matter of fact, in almost all cities, except the very smallest. Its peculiar importance as a municipal function arises, of course, from the fact that the congestion of city life not only causes health dangers to arise which are of relatively little importance in the more sparsely populated rural areas, but the city dweller, by reason of that very congestion, is virtually helpless to protect himself and his family from those dangers.

[27] In recent years a very considerable amount of literature dealing with general and special phases of public-health administration has appeared. Among the more general works may be mentioned Rosenau, editor, *Preventive Medicine and Hygiene* (New York, 1913); Godfrey, *The Health of the City* (Boston, 1910); Hemenway, *American Public Health Protection* (Indianapolis, 1916). Among special manuals for health officers may be noted MacNutt, *Manual for Health Officers* (New York, 1915); Overton, *The Health Officer* (Philadelphia, 1919); and Balch, *A Manual for Boards of Health and Health Officers* (Albany, 1908). The reports of the American Public Health Association and its quarterly *Journal* contain valuable articles and a record of current developments in the field of public-health administration, and the Bulletins of the United States Health Service while not dealing specifically with health administration in cities are of great value to the health officer and students of public-health administration.

Among the more important phases of public-health protection may be mentioned the protection of the purity of the food supply of the city, the prevention and handling of contagious diseases not directly connected with the food supply, the proper disposal of the city's wastes, the housing problem, and the education of the citizenship in personal hygiene and public-health protection.

The Food Supply.— Chief among the aspects of the food supply of the city that have an intimate connection with the public health are the provision of pure water and pure milk. Water as a universal necessity of life which the city dweller is not in a position to secure for himself is of fundamental importance in the public-health problem because of its extreme susceptibility to pollution, pollution of a kind that involves the most serious of consequences. Typhoid fever, typhus, dysentery, and a long list of other serious water-borne diseases take a frightful toll in sickness and death if the city does not insure the maximum purity of the water supply. For that reason the securing of a supply of pure water for cities has been one of the chief concerns of city governments from earliest times and has been directly taken over by the majority of American cities.[28]

Scarcely less important than the water supply as a factor in public health is the milk supply. Especially fundamental is this factor in the control of infant mortality, a scourge under which cities especially have suffered. Although our cities have not been inclined to undertake the function of themselves supplying pure milk, they have in all the more important cities taken steps to insure as far as possible the elimination of milk-borne diseases, which include not only the water-borne diseases but a

[28] More than three-fourths of the cities with more than 30,000 inhabitants in 1917 reported expenditures for water-supply systems.

number of others as well, such as scarlet fever, tuberculosis, etc. This is done by means of licenses required of milk dealers based on the meeting of certain standards of purity in the milk they sell. In the more careful cities the inspection of milk extends over the whole business of milk distribution from its source to its delivery. Furthermore in the summer season, when the danger to public health from impure milk is the greatest, a number of the larger cities have aided in the provision of pure milk for babies through municipal milk stations.[29]

Similarly cities are undertaking to an increasing extent to insure the purity of other articles of food upon which the citizen is dependent and from the impurity of which his health may suffer. The regulations and inspection established for this purpose not only safeguard the purity of the food at the place of sale in the markets but also its serving in public eating places.[30]

The control of contagious diseases is the oldest of the activities of city health authorities and is still of fundamental importance. Under this head come principally, quarantine, isolation, vaccination, and disinfection. In this regard health departments have very broad powers of interfering with individual liberty and property for the welfare of the community as a whole. In its control over the public schools the city has both the power and an obligation to protect the children from being exposed to contagious diseases, and the exclusion of pupils suffering from or being carriers of contagious diseases is an obvious measure of public-health protection. Both the closing of all public gathering places, including churches, during the recent influenza epidemic, and the ordering of

[29] Three-fourths of the cities of more than 30,000 inhabitants in 1917 reported expenditures for milk and dairy control.

[30] Nearly three-fourths of the cities with more than 30,000 inhabitants in 1917 reported expenditures for food regulation.

rat-proofing for houses as a protection against the spread of bubonic plague illustrate the extensiveness of the powers of public-health authorities.[31]

It must be pointed out that the main emphasis in modern public-health administration is upon prevention rather than cure. But many of the most effective measures of health protection against contagious diseases are of very recent origin, owing to the limited knowledge of the causes and methods of prevention of some of the most serious of these diseases until within the last few years. Malaria and yellow fever are illustrations of diseases against the spread of which no effective measures could be adopted until the recent discoveries of the nature of their transmission. But it must be admitted that cities are lagging considerably behind the progress made by medical and sanitary science both in the adoption of the measures proved to be effective and in the extent to which ordinances and regulations are enforced. The greatest recent progress perhaps has been in the prevention and treatment of tuberculosis.[32] But the total expenditures for public-health administration, comprising prevention and treatment of communicable diseases, conservation of child life, and food regulation and inspection, in the cities of more than 30,000 in 1917 amounted to only $0.48 *per capita* or 2.5 per cent of the expenses of general departments. It is not as easy to demonstrate the financial benefits to be derived from public-health protection as it is in the case of the fire department, nevertheless careful investigation shows that the money loss to a com-

[31] Hemenway, *Legal Principles of Public-Health Administration* (Chicago, 1914), contains a comprehensive treatment of the law governing this phase of the police power.

[32] Over half of the cities of more than 30,000 population in 1917 reported expenditures specifically for the prevention and treatment of tuberculosis.

munity from preventable disease is very much greater than would be the expense of a system of public-health protection that would largely eliminate this waste of life, energy, and happiness.

Waste Disposal.— Intimately connected with the health of the city, though like the water supply not usually under the direct administration of the health department, is the disposal of the city's wastes. The city's wastes comprise first of all the human waste which is a special menace to public health. Until comparatively recent times in municipal history the sanitary removal of such waste through sewers was not regarded as a municipal function, and in this country this function was at first left largely to private undertakings. The increasing realization of the importance to public health of a sanitary method of removing this source of danger has led more and more cities to take over or construct public sewage systems, until to-day practically all American cities provide public sewerage.[33] In a number of cities the problem of ultimate disposal of the sewage has come to be as important as the collection and removal, owing to the dangers to other communities from the ordinary method of emptying the sewers into streams or bodies of water.

Although the collection and disposal of sewage is the most important of the problems of waste removal in cities from the point of view of public health, it is not the only one. Other organic waste that must be taken care of includes garbage, dead animals, and manure. The proper removal of this waste is particularly important because if not properly looked after it becomes the breeding place of flies, now recognized as one of the great disease car-

[33] In 1917 only two cities, Atlantic City, New Jersey, and Lancaster, Pennsylvania, of more than 30,000 did not report expenditures for sewer systems.

riers. Other forms of waste such as trash and ashes present a considerable problem in the matter of their removal but it is only incidentally a public-health problem.

The Housing Problem.— The problem of congestion in cities has a very fundamental health aspect. Not only do miserable tenements and slums make the control of communicable diseases almost impossible, but the lack of adequate light, air, and opportunities for cleanliness result in a general lowering of vitality and a predisposition toward disease. The housing problem is indeed of vital importance from the point of view of other considerations than public health, especially in regard to its moral aspects, but the work of cities in controlling housing conditions has been chiefly directed toward the insurance of a minimum amount of light and air and the provision of adequate sanitary facilities in tenement buildings. American cities have not attempted themselves to provide houses as have many European cities, and indeed they do not ordinarily have power to do so, but the shortage of houses of any kind in the last few years has brought the matter of regulating rents and even encouraging and aiding the building of dwelling places to the front as a vital municipal problem.

Instruction in Public Health.— Finally, but by no means least, among the activities of the city intended to safeguard the public health is the education of the public in personal and public hygiene. This, unlike the provision of a water supply, the removal of wastes, and the regulation of tenements, is a part of the work of the health department, and is in some respects the most important part. For children, instruction in these matters can and should be provided in the public schools. But for the great mass of adults, who are perhaps even more in need of such instruction, the health department must be the

source of information. In fact the work of the health department cannot in a democracy go very far beyond the public understanding of its value and a campaign of education on health matters at one and the same time reduces the need of governmental action and insures adequate support to such action as is required. For that reason modern health departments spend an increasing amount of energy in preaching the doctrine of sanitation and hygiene through leaflets, lectures, exhibits, motion pictures, visiting nurses, inspectors, etc.

In the organization of health departments we find a very general adoption of the principle of board administration, or rather a very general retention of that principle, which, as has been pointed out, was for a while the prevailing and accepted form of organization for American municipal departments. There is more to be said for the advantages derivable from the board form in the work of public-health administration, perhaps, than in the case of the police and fire departments, but both modern opinion and practice are swinging over to the commissioner idea, with a single responsible head. In commission governed cities public health is rarely entrusted to a separate department but is included under some other department such as public affairs, or public safety. Many health boards must be composed of or at least include on their membership practicing physicians. But this requirement is not sound in theory and has not worked out well in practice. The ordinary practicing physician, particularly the one who can find time for work on a health board, is not ordinarily a sanitarian. He is not qualified to judge as an expert and yet is inclined to interfere in details of administration which the expert sanitarian is better able to handle. Something might be said for an advisory health board, but in times of emergency when prompt action and de-

cisiveness of purpose are required the administrative health board may be as dangerous as a police or fire board.

It has already been pointed out that the state as a whole has under modern conditions a direct interest in insisting that certain standards of public-health protection be met by its cities. To do that it is not sufficient to enact a law imposing that obligation on the city. There must also be some way of making that obligation effective. City health authorities existed in this country more than fifty years before the first state board of health was established, but in the last fifty years there has been a steady increase in the number of state health authorities, in their powers, and particularly in their control over the local bodies. The adoption of state health codes within recent years and the power given to state health authorities in an increasing number of states to insist on the appointment of health officers in the cities, to receive reports from them, and to supervise their work is giving the states an increasing control. One fundamental basis for adequate health measures is the collection and compilation of accurate vital and disease statistics. States are beginning to require such statistics of the cities and to aid the communities, particularly the smaller ones, with their superior technical resources. In the matter of central control over local public-health administration England has since the middle of the last century been far ahead of our states, while on the continent of Europe public health has very generally been regarded as a matter of vital central concern.

Not only does the city need supervision from the state in the interest of the general welfare, but it should be protected by the state against health dangers which it cannot adequately meet. The pollution of its water supply, the impurities in milk and food brought into the city, the

introduction of communicable diseases by persons, animals, or goods shipped into the city, are all illustrations of the fact that the city needs the protection of the state, and even of the Federal Government, within its sphere if its own efforts are not to be more or less set at naught by the negligence of outside persons or governmental units. There is, therefore, every reason why the city and the state should engage in the closest coöperation in the field of public-health protection.

Public Education.[34]— Historically, public education is one of the earliest functions of American cities, for within a few years of the first settlement of the Massachusetts colony, a general law was passed requiring every town of more than fifty families to appoint a schoolmaster to be paid by the inhabitants in general, and in case of larger towns to provide a grammar school. Although it soon became the general rule that public funds should be used to aid in providing educational facilities, the development of free school facilities supported wholly by public funds and the requirement of compulsory attendance did not become general until after the Civil War. But in this respect the United States were distinctly in advance of Great Britain. Cities became the natural units for the provision of public education, first primary, then secondary, and finally, in some cases, also higher education.

[34] Among the many works on school administration may be mentioned especially Dexter, *A History of Education in the United States* (New York, 1906); Dutton and Snedden, *The Administration of Public Education in the United States* (New York, 1913); Cubberly, *History of Education* (Boston, 1920); Cubberly and Elliott, *State and County School Administration* (New York, 1915); and Monroe, *A Cyclopedia of Education* (New York, 1911–1913). Current problems and developments are discussed in the reports of the United States Bureau of Education, in the proceedings of the National Education Associations, and in the special educational periodicals.

From the point of view of expenditure, public education is to-day by all odds the most important of municipal functions. This is clearly shown by the striking fact that in 1917 in the cities having more than 30,000 inhabitants the expenses for schools alone constituted nearly a third of the total governmental expenses, more than the combined expenses for police, fire, and sanitation, and health departments. Unlike the expenses of the police departments, moreover, the percentage of expenditures for schools increases in general inversely with the size of the city, the average for cities between 30,000 and 50,000 being nearly 39 per cent of the total expenses of general departments and diminishing in each successive population group, though the *per capita* expenditures vary directly with the population groups.

Types of School Administrations.— The first striking feature of municipal educational administration is the fact that practically everywhere the control over schools is in the hands of a board. Though, as has already been pointed out, the board plan for administrative departments, which was formerly very common and much in favor in our cities, has been gradually abandoned in favor of the single commissioner type, this has not been true of the administration of schools. The earliest school administration in the Massachusetts towns was entrusted to a special school committee, elected at the annual town meeting, and the multiple principle has scarcely ever been abandoned in this branch of municipal administration. The principle has been defended on the ground of the peculiar nature of educational administration, but while it is true that promptness of decision and centralization of power are not as imperative in the conduct of schools as in the case of the police, fire, and even health departments, the problems of administration are not so different in this

field as is sometimes asserted in defense of the board system.

A second characteristic of school administration, somewhat less general, but of much greater significance, is the manner of constituting the educational authority. In the majority of cities the school board is chosen by popular election, though in a number of cities it is appointed either by the mayor, or by the city council, or by the courts. Consequently the school board in the typical city constitutes an independent authority outside of the regular city government, and in a number of instances it even has independent powers of taxation. From the point of view of sound principles of governmental administration there is nothing to be said for the independent school authority. The system is generally defended on the plea that schools are too important a function to be subjected to "politics" and that the independently elected school board is required to keep them out of politics. The main weaknesses of this position seem to be apparent. In the first place, it may be questioned whether school administration is so obviously more important than police protection and the conservation of public health, for instance, as to demand a departure from sound principles of unification and simplification. In the second place it is obvious that public education cannot and should not be taken "out of politics" in the sense of control by public opinion, which involves the determination of the relative importance to be accorded to this function of municipal government as compared with the other activities. In the third place, the independent school board has not demonstrated itself to be beyond the reach of corrupt "politics," while the lack of interest in school elections frequently results in the selection of boards that are in no sense representative. Finally, the divorcing of this

function from the control of the city government tends to that extent to diminish still further the already too limited interest shown by citizens in municipal affairs. In spite of these obvious objections to the independent school authority, it has the support of most of the persons actively interested in school administration and is not likely to be generally abandoned. It should be said, moreover, that the cities in which the school board is appointed by the mayor, the theoretically superior system, have not shown any conclusive evidence of their superiority in the respects enumerated above over the cities with the elected boards.

There is a distinct tendency noticeable to reduce the size of the school boards and even in the large cities where boards of twenty or more were formerly not uncommon, the typical board now has less than fifteen members and in some cases as few as five, while a few cities have substituted a single elective commissioner for the board. The advantages of the small board of five over the much larger boards still found in a number of cities are too obvious to need discussion. In the election of school boards women have very generally been accorded a vote even where the law did not allow them any other participation in the suffrage.

The school board has control of the physical properties of the department and usually controls the purchasing of sites and the erection of new buildings. It also has control of the purchasing of supplies and the business administration of the system. In these matters it commonly acts through committees or business agents. But in its control over the educational administration it practically everywhere acts through a specially trained official known usually as the superintendent of schools, selected by the board for a term of years varying from one or two to

five or six. This official, who is expected to be a trained educator, is chiefly responsible for the efficiency of the teaching staff, the suitability of the curriculum, and the general improvement of educational policies and instruments. These positions usually command relatively high salaries.[35] The positions below the superintendent and assistant superintendent are almost universally filled on the basis of examinations or other evidence of fitness such as certificates of training and experience. An interesting development during the year 1919 was the growth of the American Federation of Teachers, affiliated with the American Federation of Labor, but not subject to the latter in the calling of strikes.[36] Contributions to teachers' pensions are not so general in cities as in the case of policemen and firemen, though in 1917 eight of the ten largest cities reported such contributions and a majority of the cities between 100,000 and 500,000 showed expenditures for teachers' pensions.

One noteworthy feature of the personnel of the school system, both urban and rural, has been the rapid feminization of the teaching profession. In 1880 about 43 per cent of the teachers and supervisory officers were males while in 1917 only 16 per cent were males. A number of factors have contributed to this development, chief among which perhaps are the low salaries paid in the teaching profession as compared with other occupations. In 1917 the average annual salary paid to teachers in public elementary schools, rural and urban, was $635, and while city schools pay on an average much more than the rural schols, the salaries even here are much too small to attract and keep able men.

[35] In Chicago the superintendent of schools was recently awarded a salary of $18,000 a year.

[36] See *The American Year Book* for 1919, pp. 808–810.

The Scope of Public Education.— The scope of the free public education offered by city school systems has increased enormously and is continually extending. Beginning with the modest but significant provision of a teacher to instruct in reading and writing in the early Massachusetts colonial settlements, the scope of the free public-school system has expanded to include successively an eight-year elementary, or grammar, school, a four-year secondary, or high, school, and in a few cities [37] an institution of higher education of college grade. At the bottom of the educational system free public kindergartens have also become an accepted part of the public-school system. A recent development of great promise is the movement for junior colleges in cities which carry on the educational system for two years beyond the regular high school, while the high school course itself tends to be separated into a junior high school and a senior high school, thus separating what were formerly the seventh and eighth grades from the elementary school, and increasing the caliber of the instruction in the higher classes of the secondary school. Furthermore the regular work of the day schools has been supplemented by night schools and vacation schools.

The character of the curriculum in the public schools has undergone a no less extensive alteration. Vocational education, which was practically unknown in our public-school system a generation or so ago, is now to a greater or less extent, a recognized part of the public-school system of every sizeable city. Added impetus has recently been given to this movement by the provisions of the Smith-Hughes Act by which Federal aid is available for vocational education. Partly as a

[37] Notably New York City; Cincinnati, Toledo, and Akron in Ohio; Philadelphia; and Charleston, South Carolina.

result of this legislation there has been a considerable growth in the number of continuation schools which recent legislation has now made compulsory in over half of the states.

The interest of the state as a whole in education has already been pointed out in the discussion of rural education. The growth in the control of local education by state authorities which has been so marked in the United States in the last fifty years has affected the cities less than the other school districts because the minimum requirements set up by the states have usually been lower than those demanded locally in the cities, but in the matter of examinations for teachers, the selection of textbooks, and more recently in specific requirements as to vocational education, cities have felt more and more the influence of the state authorities. At the same time it is still characteristic of municipal school administration in the United States as compared with the French and English systems that a large amount of autonomy is left to the municipalities. As long as the educational authorities in the city are likely to be of a higher type, as far as ability and freedom from political influence is concerned, than the state educational authorities, which seems to be the case in most states to-day, little would seem to be gained from circumscribing the autonomy of the latter by increasing the power of interference of the former.

Public Libraries.— Schools are not the only instruments of public education that are provided by American cities. Public libraries are also agencies of great potentialities from an educational standpoint. The provision of public-library facilities is one of the few directions in this country in which private beneficence has played any appreciable part in aiding cities to serve

the public. The erection of a library building has in a great many cities been wholly or partly in consequence of a private gift. But the maintenance of the library is commonly left entirely to the city. In 1917 all but one of the sixty-six cities with an estimated population of more than 100,000 reported expenditures for public libraries, with an average *per capita* expenditure of $0.23. Of the 173 cities of between 30,000 and 100,000 inhabitants all but eleven reported expenditures for public libraries, averaging $0.19 *per capita.*

As an important part of the educational facilities of the city the library administration should obviously be organically connected with the school system, especially in view of the wisdom of combining branch stations with the school library facilities, but as a rule the public libraries are under the control of a special library board or other separate authority. Those specially interested in public libraries voice the same objection to their being incorporated with the rest of the educational system that the friends of the school system urge against having that incorporated with the rest of the city government. The claim is made that the director of public education has no knowledge of or real interest in public libraries and that the latter will fare better if put under a separate administration. It is possible that the pressure which a library board and a library association can bring to bear for larger appropriations out of the city treasury is likely to be more effective than the pressure exercised by the director of public education for libraries as one of the activities under his control. But it is also more than likely that the money obtained would be spent with a good deal more reference to the educational values of the library as a part of the general educational system than is true where

the interests are separate, and, because of the limited funds available, inevitably more or less conflicting.

Social Welfare.— Among the more recent municipal activities to develop in this country are those which, for lack of a better term, may be called the social welfare activities of the city. For purposes of this discussion these activities may be regarded as those directed toward the assistance and improvement of conditions of those citizens who are wholly or in part economically dependent, or who at least are largely dependent upon public undertakings for the supply of those factors in existence which, if not to be classed as absolute necessities of a bare existence, are at any rate recognized as being essential parts of a decent existence.

Poor Relief.— In the first of the categories fall the activities commonly designated as charity functions or poor relief. Traditionally, as we have seen, this is regarded in this country generally as primarily a county function. But while the county has been made by law the general agency for poor relief, at least of outdoor relief, the city has also generally been given power to care for the poor within its limits. As a matter of fact poverty has made itself more acutely evident in city life than in the rural sections, and it is the cities that are confronted with the more serious aspects of pauperism. Yet until within comparatively recent times poor relief in the cities has not been very extensively undertaken by the city governments but has been left very largely to the private activities of churches and other benevolent institutions. To-day the great majority of cities of over 30,000 people are spending something for outdoor poor relief, but the total amount reported for this function in 1917 was less than four million dollars, or about $0.12 *per capita,* a very small amount com-

pared to the sums spent by private charities. In addition to this, however, over forty millions were spent by these cities on poor institutions, the care of children, hospitals, insane institutions, and other charities. So far as institutional care is concerned there seems to be general agreement that the city is the logical agency for meeting the need, but in the matter of outdoor relief the tendency is still to rely largely on private charitable undertakings. But the evils of unscientific, indiscriminate, and overlapping activities in the giving of outdoor relief are so obvious that the centralization of these activities in the hands of a properly directed city welfare department would seem to be the best solution. This would not necessarily mean the impersonal machine-like performance of an activity that calls for human interest and sympathy nor the elimination of the expression of the charitable instinct in voluntary contributions, but it should mean substituting unified and effective direction for the now frequently misdirected energy of private undertakings.

Above that element of the population which is in need of food, shelter, and clothing, is the group, normally large in every city, which, while able to provide itself with these necessities, is not able to meet the expenses of extraordinary emergencies such as sickness and legal difficulties. For this class of people some of the more progressive cities are providing free medical and legal service. It is in the long run a wiser as well as more humane practice for cities to furnish this aid without cost than to permit the unfortunates either to suffer unnecessary hardships or to become out and out dependents upon the community. For the same reason public employment agencies to meet one of the ever pressing dangers of the class of people who are just on the edge

of dependency have been established in a number of cities.

Public Recreation.— Not far removed from these more material needs of a considerable portion of city dwellers are their recreational needs. From one point of view, of course, public-recreation facilities can be justified on the ground of public-health considerations, for persons, especially children, who are without proper facilities for healthful play and exercise deteriorate physically. But no less important is this consideration from the social-welfare point of view, for the possibility of pleasant and healthful recreation is a vital factor in the state of mind of the great mass of workers. Sufficient leisure for recreation is, of course, a fundamental condition, but that is a matter which the city as such does not control. It is, however, within the power of the city to see that opportunities for free, sane recreation are provided for all elements in the population that are unable to meet the expense of commercial amusements, and in this respect American cities are beginning to make notable progress.

Until within recent years the chief emphasis in this direction has been placed by cities upon public parks. But the value of public parks as recreational facilities has often been greatly diminished by their inaccessibility to the portions of the city population that most needed them, and by the failure to make them true playgrounds. The growth of the playground movement, especially for children in congested areas, but also by the provision for baseball, tennis, and other athletic games for adults has been the most significant development of recent times in the field of municipal social-welfare activities. To these may be added such facilities as bathing beaches, and swimming pools which are becoming mu-

nicipal undertakings in an increasing number of cities each year, while municipal theaters, concerts, lectures, museums, and zoölogical gardens combine recreational and educational features. Community pageants, plays, and similar undertakings are proving their value as recreational undertakings calculated to create a real community feeling, while community houses and other social centers are proving worth while undertakings for the city for like reasons. The so-called Americanization movement, better termed a citizenship movement, will depend largely for its success on the recreational appeal it makes, and its benefits will be conferred upon all the inhabitants of the city, whether native-born or foreigners. The intiative for all these new developments has been largely in private hands, but the establishment of special recreational departments or commissions in a growing number of cities proves that our municipalities are waking up to their obligations and opportunities in this regard.[38]

Public Works.[39] — Public works, for purposes of this discussion, may be regarded as those services fur-

[38] Among the agencies which have been particularly active in the development of recreation in cities may be mentioned especially the American Playground and Recreation Association, now operating as Community Service, whose publications deal with the progress made in this direction. Among books dealing with various phases of this matter may be mentioned, Ward, *The Social Center* (New York, 1913); the volume of the *Annals of the American Academy of Political and Social Science*, on "Public Recreation Facilities," March, 1910; and Mero, *American Playgrounds* (New York, 1909).

[39] There is a very extensive literature on the subject of municipal engineering in general and on particular branches of municipal public works. One of the best general treatments for the student of municipal administration is Whinery, *Municipal Public Works* (New York, 1903). A more elaborate treatment may be found in Baker, *Municipal Engineering and Sanitation* (New York, 1906); and a valuable reference work is Maxwell and Brown, *Encyclopedia of Municipal and Sanitary Engineering* (New York, 1910).

nished by the city which involve considerable permanent outlays for their construction and the application of engineering science for their erection and operation. They may be distinguished from public utilities, to be considered in the next section, principally in that they have been found to be services which, because of their vital importance to the welfare of the city, cannot well be left to private profit-seeking undertakings. Chief among these activities, aside from the erection of public buildings used in the other activities of the city, may be mentioned the care of the streets, the provision of a pure water supply, and the collection and disposal of the sewage. All three of these major activities have very generally been imposed upon cities by law.

Highway Maintenance.— In the care of the city's streets the first problem is that of paving. As far as the legal obligation of the city is concerned nothing more is demanded than that the streets shall be kept in such condition as not to be dangerous to persons and vehicles using them. But from the point of view of the city much more is demanded. Pavements must be suitable for traffic in the first place. They must be easily cleaned. They should be as dustless and as noiseless as possible. To find a pavement that meets all of these requirements is not so simple, especially as climatic conditions also play an important part. And then there is the very important element of expense to be considered. Formerly wood blocks were in very general use for paving material, superseding the old cobblestone pavements. Then brick pavements, granite block, and macadam came to be used very generally. Now the tendency is all in the direction of the solid surface or sheet pavements under a variety of different forms, from relatively soft asphalt to the hardest of concrete pavements. From the point

of view of traffic each of these various kinds of pavement has distinct merits and defects. Of especial significance is the rapid change from horsedrawn traffic to motor propelled traffic which has occurred within the last twenty years. In the matter of expense the availability of materials plays a large part, and, of course, the question of durability is as important as the original outlay.

Street paving, as distinguished from such services as police, fire, and health protection, which are administered as general services for all the inhabitants, is regarded in a sense as a special service to the property owners abutting on the streets and this special service is charged to them in the form of special assessments. The proportion of street-paving expense paid by the abutting property owners varies greatly in different cities, but everywhere it is considerable. Very frequently also the paving of a street is made dependent on approval by a majority of the propery owners on that street, in recognition of the special burden imposed upon them. But as the amount of the assessment paid by them is not supposed to exceed the increase in the value of the property they own, in consequence of the pavement, the public interest in a properly paved street should not be prejudiced by the unwillingness of the property owners to contribute their share of the expense. American cities have entered so extensively on a program of street paving that they have in many cases reached the limit of the financial ability of the city to contribute even its share of the expense of further paving.

Keeping the streets in repair after they have been once paved is more generally regarded as a general obligation. but in some cities the abutting property owners are assessed even for this purpose. It is hard to see any justice in this, however, as the deterioration of the streets is

not caused to any appreciable extent by the use made of them by the abutting owners.

Other aspects of the care of the streets that make heavy demands upon the finances of the city are the cleaning and lighting of streets. Cleaning is required not merely from the point of view of traffic consideration but also from considerations of sanitation, comfort, and beauty. In most of the Northern cities of America the matter of snow removal from the streets presents a very difficult problem. Street lighting is demanded both for traffic safety and for protecting the citizens from crime at night and most cities now spend considerable sums in street lighting. The commonest forms of lighting to-day are gas and electricity, with the trend distinctly away from the former method, which was the type of street lighting first perfected. Finally the matter of traffic regulation must be considered not only for the purpose of avoiding accidents but also for the purpose of increasing the efficiency of streets in the performance of their function as arteries of traffic.

Sidewalks are for pedestrians what the streets are for vehicles. They must be properly laid, cleaned, and kept in repair. But although the sidewalks are almost universally the property of the city, the duty of laying them and keeping them in repair and clean is generally put wholly upon the abutting property owner.

The Public Water Supply.—The second main activity of cities under the head of public works is the furnishing of a pure and adequate water supply. It has already been pointed out how essential such a supply is to the health of the inhabitants. It is also of fundamental importance in the matter of protection against fire. For these reasons water supplies are now almost universally municipal undertakings in this country, though at an

earlier date private companies furnished water under franchises and continue to furnish it in some of the smaller cities to-day. There seems to be no question that this service is one which the city itself should undertake.

In some cities the adequacy of the water supply presents a difficult problem. Most cities, it is true, grew up on streams or other bodies of water in the first place, because the matter of a water supply was of prime importance for every settlement. But in many cases the original supply, even when not rendered unfit for use by increased congestion of population and industrial uses, has become inadequate for the larger city that developed. Almost everywhere, moreover, the pollution of the water supply, if a surface supply, has forced the city either to seek its water elsewhere or to install purification works. New York City and Los Angeles are recent examples of American cities that have sought their municipal water supply a hundred or more miles away in the mountains at tremendous initial expense. The erection of pumping stations, the networks of water mains, the provision of fire hydrants, are among the less difficult though expensive engineering phases of the water-supply problem. Of chief importance are the purification works which vary all the way from simple settling basins to elaborate filter systems calculated to remove not merely inorganic impurities but pathogenic bacteria as well.

American cities as a rule show a much larger *per capita* consumption of water than do European cities. Part of this is due to the more general use of sanitary facilities employing water, but in large part it is also due to waste, either through imperfect mains and pipes or by individual carelessness. To limit individual extravagance of water users cities are more and more adopting the plan of metering houses and manufacturing plants and charging a

water rate based on actual use. This has the added advantage also of enabling the city to check up on its own use of water and to discover wastage due to imperfect systems.

The total value of land, buildings, and equipment of municipal water supply systems in 1917 in the 172 cities of more than 30,000 inhabitants which reported such properties was more than $1,611,197,516, or considerably more than half of the total value of the land, buildings, and equipment of all the general departments, including city halls, police and fire stations, hospitals and other institutions, parks, schools, libraries, etc.

Sewerage System.— Closely connected with the water supply is the matter of sewerage, for most of the water that is furnished to private users by the city has to be carried off again after use. But the waste water carried off from houses and taken care of by the system of so-called sanitary sewers is only one part of the problem, and not the most difficult one. For in addition to this outflow, which is fairly constant and easily computed, is the surface drainage resulting from snow and rainfall. Here the problem is complicated by the necessity of taking care of immense amounts of water in a brief space of time and frequently necessitates a system of storm sewers in addition to the sanitary sewers.

Then there remains the problem of final disposal of the sewage. Formerly cities simply conducted the sewage to the nearest stream or body of water and deposited it there. This is still possible in the case of cities located on the seaboard, but in the case of cities located on streams or lakes, the dangers to other communities from the pollution of streams on which they are located has led many states within recent years to pass anti-stream pollution laws which have necessitated the treatment

of sewage by cities before discharging it into lakes and rivers. There are a number of different ways of treating sewage, from mere screening or by sedimentation to elaborate treatment in septic tanks or filtration beds. Such treatment is not intended, however, to make the effluent, or liquid which is carried off, even approximately pure after treatment but chiefly to reduce the noxious character of the sewage and make it possible for communities that rely on the stream into which the effluent is emptied to make the water supply fit for use without too great effort. But the number of American cities which operate really effective sewage disposal works, though steadily increasing is still relatively small.

Public Utilities.[40] — For purposes of this discussion we may define public utilities as those businesses, which, either because they are natural monopolies or because they involve a special use of public property, are regarded as so affected with public interest that they are subject to special control by the government. They are distinguishable from the fundamental public services such as police, fire, and health protection chiefly in that they have a saleable commodity which private capital has found it profitable to supply. Chief among them, in addition to the water supply and sewerage systems which were included under the head of public works because they are so generally furnished by the cities themselves, may be mentioned light and power plants, telephones, street railways, docks and wharves, markets, etc.

[40] Among the numerous general discussions of this subject reference may be made especially to King, editor, *The Regulation of Municipal Utilities* (New York, 1912); Wilcox, *Municipal Franchises* (New York, 1910); *Annals of the American Academy of Political and Social Science*, "Municipal Ownership and Municipal Franchises," June, 1906; *ibid.*, "The Control of Municipal Public Service Corporations," May, 1908.

There are two main aspects of the public utility problem in cities. One is the question of the relation of the city government to the private corporations supplying these public utilities. The other is the question of the city itself owning and operating these utilities. These two aspects are generally considered under the heads of the regulation of municipal utilities, and municipal ownership of public utilities, respectively. Although they constitute distinct phases of the public-utility problem they are closely connected with each other, as will appear.

Privately Owned Municipal Utilities.— Cities have very generally been given the power in this country to grant franchises to public-utility corporations. These franchises gave the corporations the right to use the city streets, sometimes under legislative authority granting a monopoly right, and on the other hand stipulated or were supposed to stipulate conditions of service and the charges to be made for the same. At an earlier period of municipal history it was not uncommon for the legislature itself to confer these privileges upon corporations, but the abuse of this power led, as has been seen, to the very general insertion of constitutional prohibitions upon the exercise of this power. The power of regulation involved in the franchise granting power was, however, frequently little used and the abuses of franchise grants by cities were as flagrant as in the earlier legislative franchises. The common law, it is true, permitted some limitations on public-service corporations in the direction of insisting upon reasonable service and reasonable rates even without franchise safeguards, but this power was largely negatived by the positive grant in franchises of privileges without express restrictions. On the other hand, the regulatory power of cities was restricted by the judicial limitations against unjust stipulations de-

rived from the due process clauses of the Federal and state constitutions.

Under a properly drawn franchise both the city and users could be safeguarded against extortion by the companies. So long as the operation of municipal utilities under loose franchises proved profitable to the private corporations little was done until recent years to protect the public. Now that the increased cost of operation has made the formerly liberal provisions as to rates and service unprofitable to the corporations, the courts are giving them relief, often with too little regard for the fact that the present capitalization on which the returns are estimated represents watered stock, that is, values which themselves represent the capitalization of the formerly unreasonable profits. The power of cities to prescribe rates has become, therefore, largely a negative power and even the conditions of service, which of course are intimately connected with the rates, are only subject to the control of the city to a limited extent.

Of recent years, in fact, there has been a growing tendency to take the whole matter of public-utility regulation out of the hands of the cities and put it into the hands of state commissions. There is a good deal to be said in favor of this plan. Many utilities that were formerly separate for each city have become interurban utilities, such as light and power plants, telephones, and street railways and cannot satisfactorily be left to regulation by a number of separate municipalities. Furthermore the proper supervision and regulation of these utilities present administrative problems which single cities cannot adequately handle, especially smaller cities, because of the technical expertness required. On the other hand state utility commissions become the focus for the whole powerful pressure of the public-utility corporations and

if they yield to that pressure, as in some instances they have, the inhabitants of the city are powerless. If the regulation is in the hands of a local commission, the citizens have the power of remedying evils themselves through their control over the city government, a power which, it is true, they have by no means always used to its full extent. On this point, therefore, a marked divergence of views is noticeable.

Municipal Ownership of Public Utilities.— The unfortunate experience of most American cities with the public-utlity corporations has led to a growing conviction that the only way out of the difficulty of regulation is the ownership and operation of these utilities by the city itself. In the case of the water supply, as has been seen, there has been such general concurrence in the desirability of public ownership and operation that public ownership has all but completely supplanted private ownership. The same may be said to be true of sewerage. But as regards the other public utilities no such unanimity of opinion has been attained. It is not possible here to consider in detail the arguments for and against the municipal ownership and operation of the other public utilities. But it may be pointed out that the arguments both pro and con rest more largely on theoretical and philosophic considerations than on actual facts. The movement for public ownership and operation has unquestionably been growing in American cities in recent years, but American cities are still a long way behind English municipalities in this regard. Political, social, and economic considerations all play an important part in the discussion of this question, but in actual fact the adoption of the policy of municipal ownership has very largely been dictated in a particular city by the experience of abuses under private ownership which led to the radical cure by public

ownership without very serious consideration of the problems and difficulties involved in the remedy.

The utilities most commonly owned and operated by American cities of more than 30,000 inhabitants, aside from waterworks and sewerage, are cemeteries, markets, docks and wharves, and electric and gas plants. But ferries, toll-bridges, city farms, ice-plants, and slaughter houses are among the undertakings that appear in isolated instances. Curiously enough, street railways, which are not only among the most important of modern municipal utilities, but are very generally municipalized in English cities are municipally owned and operated in only a few cities of the United States.[41] But this is due in part at least to the fact that cities have not until recently been accorded the power to own and operate street-railway systems. There is a strong demand for municipalization of street railways in a number of the larger cities of the country and the financial straits in which many private companies find themselves under the present high costs of labor and materials has changed the attitude of a number of corporation executives towards municipal acquisition and operation from hostility to hospitality.[42]

City Planning.[43]— In some respects city planning, that is, the conscious direction of the manner of the city's establishment, its growth, and physical improvement is one of the oldest of city functions, since it is known that some of the cities of antiquity were laid out in ac-

[41] Among these may be mentioned San Francisco and Seattle.

[42] In addition to public utilities a number of American cities own and operate what are termed municipal utilities, that is, undertakings that serve the city as such but not the public.

[43] The literature of city planning in this country is almost wholly the product of the last ten years, but it has in that time attained very considerable proportions. Among the more useful general

cordance with plans drawn up by famous architects. Like other features of ancient cities, however, this function practically disappeared during the Middle Ages when cities were founded and grew up without any conscious direction. But since that period European cities, especially the capitals like London and Paris, have been more and more developed on the physical side with reference to comprehensive city plans. In this country too we find cities originally laid out in accordance with prepared plans, notably Philadelphia and Washington. But the idea of city planning as a scientific and comprehensive factor in municipal development is of very recent general application in the United States.

The distinguishing characteristic of the modern city plan as compared with the earlier efforts of cities is its comprehensiveness. It is not concerned merely with the width and arrangement of streets, though that is a fundamental part of city planning. Nor is it concerned chiefly with the beauty of parks, boulevards, public buildings, and monuments. It goes much deeper than that into city development for it comprises the regulation of building zones, the treatment of the transportation terminals, the whole housing problem, the location of recreation facilities, and the architecture and location of public buildings, etc. In fact the comprehensive city plan comes into contact with practically every one of the city's activities.

Interest in the city-planning movement is of recent

works may be mentioned, Robinson, *The Improvement of Towns and Cities*, fourth edition (New York, 1913); Nolen, *City Planning* (New York, 1916); Bird, *Town Planning for Small Communities* (New York, 1917); and Nolen, *Replanning Small Cities* (New York, 1912). Of special value are the *Proceedings of the National Conference on City Planning* published annually since 1910, while the numerous city-planning reports in particular cities show the progress of the movement.

growth in the United States and even where interest has developed the activities of cities in this direction have been hampered seriously by lack of powers and even by positive constitutional hindrances. But since 1910 there has been a great increase in state laws specifically authorizing cities to establish city-planning commissions and removing some of the restrictions which interfered with their effectiveness. In 1917 over fifty of the cities with more than 30,000 inhabitants reported expenditures for city-planning purposes, and in the last three years a considerable number of other cities have undertaken such activities.[44] But the wide scope and fundamental importance of the city plan has by no means been generally recognized even in those cities in which the beginning has been made in the direction of city planning.

Municipal Finances [45]

Sources of Municipal Revenue.— The most pressing of the problems of municipal finance is that of securing increased sources of revenue. The principal classes of revenue receipts in 1917 for cities of more than 30,000 population, with the percentage of total revenue receipts derived from each were as follows: property taxes, including the general property tax, special property taxes, and poll taxes, 64 per cent, of which proportion the general property tax alone yielded more than 97 per cent; earnings of public service enterprises, 10 per cent; special assessments, 7.8 per cent; business and non-business license taxes, 5.6 per cent; highway privileges, rents, and interest, 5.5 per cent; subventions, grants, gifts, dona-

[44] See the *American Year Book* for 1917, 1918, and 1919.

[45] There is no general work available on municipal finances. Special references will, therefore, be given under the various phases discussed.

tions, and pension assessments, 4.1 per cent; and all other sources of revenue receipts, 3 per cent.

By far the most important source of revenue receipts for cities, as for counties, therefore, is the general property tax, and the objections that have already been brought out in discussing this kind of taxation apply equally to the cities and the counties. Furthermore, aside from its defects as a method of taxation, the limit of productiveness of this source of income has been reached in the great mass of cities, because the constitutional limitations as to the general property tax rate have in most cases been reached or closely approached. Generally speaking cities employ their own assessors for making valuations of property for purposes of taxation. In a number of states, however, some or all of the cities employ no assessors but report to a larger unit, usually the county, in some cases the township, the amount required to be raised for city purposes, and the county then, using its own valuation of property within the city, generally collects the tax and turns it over to the city.[46] Theoretically there is good reason for putting the assessing function in the hands of a single authority, for where the city and the county each exercise this power there is a useless duplication of the expensive assessing process and frequently a considerable discrepancy in the valuation of the same property for purposes of the general property tax. In practice, however, as has been seen, the assessing function is in general very poorly performed by the county officials, and unless the assessing process is made subject to effective supervision and control by the state,

[46] Among the states in which this system is found are Alabama, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Washington, and West Virginia.

which has been done scarcely anywhere as yet, not only the state itself but the subdivisions within the county will suffer from an inefficient performance of this fundamental function which they are powerless to correct.[47]

One rather popular proposal for increasing the sources of municipal revenue is to increase the amounts derived from the second largest source of revenue receipts at present, namely the earnings of public-service enterprises, either by making those now operated by the cities more profitable by means of higher charges, or to increase the number of public services directly operated by the cities to include particularly those which are by nature more easily adapted to yield a profit. This is one of the considerations that has prompted English cities to embark so extensively upon programs of municipal trading. Now it is true that according to the Census reports in 1917 the revenue receipts from the earnings of public-service enterprises in cities of more than 30,000 inhabitants exceeded the governmental cost payments for the expenses of these enterprises by some $60,000,000, yielding a net income amounting to almost 6 per cent of the total revenue receipts. It is also true that the public-service enterprises commonly operated by American cities are of a nature in which profit almost necessarily is a subordinate consideration to service. From both of which considerations it might be concluded that the more extensive embarkation by cities in the field of municipal ownership and operation of public utilities would promise considerably enlarged revenues. But to offset this conclusion it must be remembered, as the Census Bureau itself clearly points out, that the accounting methods of cities, es-

[47] For a criticism of this system of county assessment from the point of view of the city see, Blachly, "Municipal Home Rule in Oklahoma," *Southwestern Political Science Quarterly*, June, 1920, p. 17.

pecially as regards their public utilities, are unscientific in the extreme and that the statements as to the costs of these undertakings are subject to a large margin of error on that account. Opponents of municipal ownership and operation have prepared elaborate statistical reports to show that many municipal utilities which are reported by the cities to be earning profits are in reality being conducted at a financial loss. Unprejudiced scientific examinations into this question are unfortunately rarely available, but it is safe to say that the conclusions as to the financially profitable nature of municipally owned and operated utilities drawn from the reports of the cities themselves are too optimistic. Furthermore, as has already been suggested, there are very serious political questions raised by the program of extensive municipal ownership, while the question of profit in connection with the undertakings most commonly cited as proper fields of municipal endeavor must yield in large measure to the social aspects involved in the furnishing of the service at cost or at slight profit. It seems fair to conclude, therefore, that whatever may be said for municipal ownership on other grounds, it can hardly be urged as an important source of additional revenues.

The next largest source of revenue receipts, namely special assessments or betterment taxes, would seem to be capable of some increase for a definite kind of municipal activity, namely the construction of improvements that directly enhance the value of adjacent property. There is, of course, a definite limit to the amount that can be collected in this way since the amount of the assessment may not, in general, exceed the resulting increase in property values, but the full amount realizable from this source has not in most cases been reached. In this connection American cities would have to be helped by

being accorded the power of excess condemnation, that is the power of condemning for a public use more property than is actually needed for the improvement itself and profiting themselves by the resultant increases in adjacent property. In a number of states constitutional amendments as well as legislation are necessary in order to enable cities to enjoy the power of excess condemnation by legislative grant.[48] This power is, however, of greater significance as an aid to effective city planning than as a source of additional net income to the city, as even the European cities which have undertaken the most extensive improvements under this plan have frequently found it to be financially unprofitable.

Of the business and non-business license taxes which constituted the next largest source of municipal revenue receipts in 1917, liquor licenses constituted the source of three-fourths of the amount so received, and that source of income has now been terminated by Federal prohibition. Business taxes, other than on the liquor traffic, were collected in every one of the cities of more than 30,000 inhabitants, in connection with licenses, but the total amount so collected was almost negligible as it constituted less than 1 per cent of the total revenue receipts. Business taxes collected without the issuance of licenses were even less important as sources of revenue and were found in considerably less than half of the cities included in the reports. In some cities, however, a very considerable revenue is derived from this source[49] and it is urged that this source of taxation could be made to yield

[48] For a good discussion of the legal aspects of this matter see Cushman, *Excess Condemnation* (New York, 1917), and works on city planning.

[49] As for instance in St. Louis, Missouri, which in 1917 reported an income of nearly two and one-half million dollars from such business taxes.

much more than it does. Such business taxes on undertakings not requiring licenses for purposes of regulation are very unpopular, however, and are generally objected to as tending to increase disproportionately the cost of necessities to the consumer.

Of the other sources of municipal revenue receipts little need be said, except to point out that cities are properly entitled to larger revenues from state subventions and grants for the performance of functions in which the state as a whole has a vital interest, such as police, public health, education, etc. Such aid should properly go hand in hand with a larger measure of control by the state over the city in the performance of these functions and, as has already been pointed out, a system of grants-in-aid combines the merits of increasing the now too limited resources of the city and strengthening the now too feeble control of the state without doing violence to local desire for autonomy. There is some limited prospect of further relief for cities by this method.

With the constantly increasing difficulties experienced by cities in securing adequate revenues, the problem has become one of not merely making the present sources of revenue more abundant but also of finding altogether new sources. But in spite of many investigations and reports on this subject little has been developed in the way of constructive suggestions. The proposal to secure for the city the so-called unearned increment in the increased value of real estate has much to recommend it both from a financial and social point of view and is actually applied to a certain extent in European cities. In this country, however, the plan is still regarded as savoring too much of socialism to make its acceptance feasible in the immediate future. The same may be said of the more complete application of the idea embodied in the much dis-

cussed single-tax system.[50] Recently there is a tendency to turn to the municipal income tax as both a fairer and more profitable kind of taxation than the general property tax, but so far no city has been authorized to adopt it.[51]

The Borrowing Power of Municipalities.—Another fundamental phase of municipal finance is the power to incur indebtedness. This power is now universally given to cities for enumerated municipal purposes, subject to very general constitutional restrictions partly as to objects but chiefly as to total amounts. Nevertheless the tremendous increase in the indebtedness of American cities is one of the most striking features of their development. The average *per capita* net indebtedness, that is the gross indebtedness less the assets of sinking funds accumulated for their amortization amounted in 146 of the cities of more than 30,000 population in 1917 to $80.75, or adopting the standard of five persons to a family to more than $400 per family. This was nearly double the *per capita* net indebtedness of those same cities less than fifteen years before. The restrictions prompted by the war operated to cut down new indebtedness during 1918 and 1919, and the abnormally high cost of construction still operates to reduce the financing of new con-

[50] The gospel of the single tax is propounded in Henry George's *Progress and Poverty,* Anniversary edition (New York, 1911).

[51] Discussions of municipal taxation can be found in all of the standard works on public finance, such as Bastable, *Public Finance* (New York, 1903); Ely, *Taxation in American States and Cities* (New York, 1910); Seligman, *Essays in Taxation* (New York, 1913); and in a special volume of the *Annals of the American Academy of Political and Social Science,* "Taxation in American Cities," July, 1906. *The Proceedings of the Annual Conferences of the National Tax Association* contain many interesting discussions of the problems of taxation, and special reports on taxation in a number of states go into the matter of local taxation as well as state revenues.

struction projects requiring bond issues, but the upward trend of municipal indebtedness will undoubtedly be resumed again when financial conditions are more stable.

Much of the municipal indebtedness represents the result of corrupt and extravagant financing of earlier years. Much of it on the other hand is offset by improvements, which, while not marketable assets, represent real values obtained for the money spent. But when due allowance is made for both of these facts it is evident that the steadily rising *per capita* indebtedness of cities is a matter for serious consideration if ultimate bankruptcy is to be avoided. On the other hand without the use of the borrowing power cities would be tremendously handicapped in providing needed public works. The pay-as-you-go policy has much to recommend it for cities as well as individuals, but putting off the erection of sorely needed works until money has been accumulated to pay for them would mean hopeless stagnation, while to pay for improvements that will serve for a generation out of current funds would not only be absolutely impossible in the present condition of municipal revenue but would be an unfair burden on the present generation of taxpayers.

What would seem to be needed in this regard is an administrative supervision by the state over municipal borrowing, such as exists in England. Arbitrary constitutional or statutory limits are undesirable, for what may be a justifiable undertaking in one city may be unwise in another, though both may have reached the constitutional limit. On the other hand the common requirement of a local referendum on proposed bond issues has not been effective in checking extravagance. In fact the local electorate, if confronted with the alternative of paying for an improvement out of current revenues or of

distributing its payment over a number of years by means of bond issues is very likely to prefer the latter. The control over municipal loans in England, it is true, has not prevented municipal indebtedness from mounting even more rapidly in some cases than in this country but it at least has assured examination of each proposed undertaking and an insistence upon sound handling of the finances, which is after all the direction in which American cities have been most lax.

Municipal Accounting Methods.— This brings up one final consideration with regard to municipal finances and that is the matter of proper accounting and control of expenditures. The Census Bureau in its annual reports calls attention to the unsatisfactory nature of municipal accounting methods which make even comparative statistics extremely difficult of compilation. Considerable improvement has appeared in this regard in the larger cities, partly due to the influence of the Census Bureau itself, but much remains to be done. As in the case of counties so in the case of cities, improved accounting and business methods would enable cities to accomplish much more than they do with the resources they now possess, and this would appear to be the first step to be taken as a measure of relief.[52]

The Relation of Cities to Counties

Cities, as has been seen, are local government corporations largely independent of the counties in which they happen to lie. Originally they were considered as gov-

[52] Among recent works on municipal accounting and budgets may be mentioned, Cleveland, *Municipal Administration and Accounting* (New York, 1909); Eggleston, *Municipal Accounting* (New York, 1914); and the volume of the *Annals of the American Academy of Political and Social Science* on "Public Budgets," November, 1915, Parts III and IV.

ernmental bodies for the performance of quite a distinct body of functions. But as has been made clear from the discussion of county and city functions, the activities of the two kinds of local government units tend to approximate each other more and more, so that in certain directions there is a direct duplication of functions. This is true for instance of the enforcement of the penal laws of the state, the sheriff and the mayor both being charged with the duty of state law enforcement within the city. There is here no coördination, and the possibility of conflicts of powers, or, what is even worse, shifting of responsibility is not only present but in some cases has made itself strikingly real. The same condition exists with reference to poor relief. In other cases, as in the double performance of such functions as tax assessment and collection, there is expensive duplication of activities, a situation which, as has been seen, cannot be said to have been satisfactorily solved by entrusting the function solely to the county authorities.

On the other hand, the city being part of the county for purposes of revenue, and comprising in many cases much the greatest part of the taxable values, is taxed not only for the necessary city functions to which the county contributes nothing, but also pays the lion's share of the expenses of the county government, much the largest part of which are used for activities in which the inhabitants of the city have no direct concern. Furthermore under the small commissioner type of board, whether elected at large or by districts, the city as such has no representatives and where there is the supervisor system the city is frequently inadequately represented as against the rural sections of the county.

There is an obvious need of readjustment, therefore, in the relations between city and county in order to avoid

useless duplication of functions, diffused responsibility, and unjust taxation of city dwellers for activities that are of no benefit to them. In England it will be remembered, boroughs or cities with more than 50,000 inhabitants are taken out of the administrative counties and constituted county boroughs. In Prussia a similar disposition was made in the case of cities of more than 25,000 inhabitants.[53] A similar device would seem to be demanded in the American system of local government.

Some steps have been taken in this country in that direction in the case of a few of the larger cities, and there is a movement afoot for its extension to other large cities as will appear in the next chapter. But it may be asked whether the proposal to take cities out of the jurisdiction of the counties should not be extended to all cities large enough to present definite local interests of their own so distinct from the concerns of the county that they should be divorced. It is not possible to state at just what stage of municipal development that begins to be the case, but it would certainly seem to apply to cities of twenty or twenty-five thousand. In Virginia at present all cities, and that means all incorporated places of more than 5,000 inhabitants, are separated from the counties in which they lie for administrative purposes. This is probably carrying the process too far, but the more general application of the principle involved in this separation would seem to be a possible line of future development that should be seriously considered.[54]

[53] See James, *Principles of Prussian Administration* (New York, 1913), pp. 110 ff.

[54] See Chaps. viii and ix.

CHAPTER VIII

DEVELOPMENTS AND TENDENCIES OF THE PAST DECADE[1]

In some respects the last decade may be said to have ushered in a new era in local government, for while much of the progress made in this period has been simply the logical extension of movements begun in preceding years, much of it is along such new lines that it may be regarded as largely the product of a new point of view developed in the past ten years. Most of these newer developments have been touched upon in the text of the earlier chapters, though in the general descriptive presentation of the system of local government as it is, it did not seem expedient to devote much space to the discussion of developments that are still so isolated or limited in their application as to constitute exceptions to the general rule. But numerically insignificant as many of these developments may seem as individual phenomena, no discussion of local government in the United States would be complete which did not devote special attention to them, warranted by their importance as evidencing tendencies which seem destined to have a profound effect in shaping the developments of the next ten years. The more

[1] The most valuable record of recent developments in the field of local government in the United States is to be found in the annual volumes of the *American Year Book* beginning with a brief summary of conditions and the record of events for the year 1910. More extended discussions of new developments and new tendencies are to be found in the volumes of the *National Municipal Review* from 1912 to the present and of the *American City,* 1909 to the present.

interesting and significant of these newer developments therefore, will be briefly reviewed here under the heads of county and city government, respectively.

New Developments in County Government

Home Rule.— California in 1911 took a new and radical step in the direction of solving the county government problem, by adopting an amendment to the state constitution which permitted any county to frame a charter for its own government by a board of fifteen freeholders to be chosen by the qualified electors of the county. The initiative for such action could come either from the board of county supervisors or from the electors by petition. The charter framed by the board of freeholders, if accepted by popular vote of the county electors, must be submitted to the legislature for approval or rejection as a whole, without power of alteration or amendment. This was simply applying to counties the same principles of home-rule charter framing which had been extended to cities in California nearly twenty years before.[2] The county home-rule amendment, however, specified that there should be at least three supervisors elected by popular vote, and required a long list of county officers [3] in each county. But the amendment expressly provided that these officers could either be elected or appointed in such manner and for such terms and at such compensation as the charter might provide. Such charters could provide for the powers and duties of boards

[2] The first home-rule city charter amendment, in 1879, applied only to cities of more than 100,000 population, San Francisco being the only city in that class. In 1892 the privilege was extended to cities of more than 3,500 inhabitants.

[3] Sheriffs, county clerks, treasurers, recorders, license collectors, tax collectors, public administrators, coroners, surveyors, district attorneys, auditors, assessors, and superintendents of schools. These are chiefly officers charged with duties of state administration.

of supervisors and all county officers, provided that such provisions should be subject to and controlled by general laws; and under another provision of the constitution, counties were empowered to make and enforce within their limits all such local police, sanitary, and other regulations as were not in conflict with general laws.[4] Counties seem to be accorded as full a measure of freedom from legislative control as are cities under the home-rule provision applicable to them, for the constitution expressly states that whenever any county has adopted a charter and it has been approved by the legislature, the general laws of the legislature required for the government of counties by Sections 4 and 5 of Art. XI. shall be superseded as to such county by the charter, so far as conflicting provisions are found in the county charter.

So far four California counties have framed and adopted their own charters under the constitutional authority so granted. The first county to take action was Los Angeles County and the new county charter which was adopted on November 7, 1912, went into effect in June, 1913. Among the more significant provisions of this new charter are the following: Auditor, coroner, clerk, public administrator, recorder, surveyor, tax collector, and treasurer are made appointive by the supervisors instead of elective as under the state law. The same is true of the constables who are made appointive by the sheriff under the charter. The civil-service eligible lists are made the basis of selection for all of these offices. Only the five supervisors, one in each district, the sheriff, the district attorney, the assessor, and the justices of the peace are elective. The fee system is abolished and a comprehensive civil-service merit system is provided for.[5]

[4] Constitution of California, Art. XI, Sec. 11.

[5] For the text of the Los Angeles charter see Gilbertson, *The*

The only state that has followed the example of California so far in the granting of home-rule charter privileges to counties is Maryland, which, by an amendment adopted in 1915, granted to counties the right to frame and adopt their own charters by a process similar to that described as in effect in California, save that no legislative approval is necessary. The legislature was instructed to provide a grant of express powers for such counties as might adopt charters under that provision, and such charters were to repeal any local laws inconsistent therewith. But the charter provisions are made subordinate to public general laws of the state; the measure of independence granted to the county being, therefore, less than in California, though the supplementary law of 1918 in execution of the amendment grants broad local powers.

Baltimore County, which does not include the city of Baltimore, was the first county to take action under the constitutional amendment, and its action is no less significant than that of Los Angeles County seven years before. In May, 1920, the charter commission elected to draft a charter under the new constitutional and legal provisions reported a charter for consideration by the voters in the November election. This charter, which, however, was defeated in the November election, adopted the commission-manager idea as its fundamental basis, the first instance in which such a proposal was definitely submitted for adoption by a county. As in California there are a number of offices which cannot be abolished by home-rule charters.[6] But in Maryland they are elec-

County, Appendix B, pp. 219 ff. For a discussion of the same see *ibid.*, pp. 172–173; and *Annals*, etc., May, 1913, pp. 229–236. A brief note may be found in the *American Year Book* for 1912, p. 190.

[6] Judges, sheriff, states attorney, clerk of courts, register of wills, justices, constables, coroners, surveyor, and treasurer.

tive by constitutional provision and cannot be made appointive by the charter as was done in California. Furthermore, education is under an independent board of commissioners. The proposed charter provided for a county council of fifteen members who should choose a county manager as chief executive officer. The latter should nominate three department heads for appointment by the council. The charter was far from being an orthodox commission-manager charter, but was a long step in that direction and away from the old diffused system.[7] Although not finally adopted it marked an important step in the movement to apply to county government the principles which have been widely accepted as instruments of progress in the organization of city government. This plan which has the approval of the National Short Ballot Organization and of a number of authorities on county affairs back of it, will no doubt receive more and more consideration as increasing attention is devoted to the study of the county problem.[8]

The movement for county home rule, in spite of its modest beginning, may be said to be fairly launched, therefore, and the spread of the idea may reasonably be expected to follow.[9] It may be proper, therefore, to raise the question at this point whether the principles of home rule apply equally to counties and cities. Inasmuch as the whole case for home rule, so-called, rests

[7] See H. W. Dodds, "A County-Manager Charter in Maryland," *National Municipal Review,* August, 1920, Vol. IX, No. 8, p. 504.

[8] See the text of a bill introduced in the New York legislature in 1916 at the instance of the County Government Association of New York State, in Gilbertson, *The County,* Appendix D, pp. 251–256.

[9] See text of constitutional amendment introduced in the legislature of New York in 1916 proposing optional county laws, in Gilbertson, *ibid.,* Appendix C, pp. 247–250. In Ohio also such an amendment has been introduced.

on the fundamental assumption that there are some matters which the people of a locality have a special interest in and which they should be allowed to regulate for themselves without interference by the legislature, the first question to consider is whether county affairs may be considered as coming within the category of such matters. It must be reiterated, in this connection, that the original conception of county government in this country did not embrace the idea of there being local interests of the county as such, but that the county was merely a convenient area for the administration of matters of state concern. Had that original idea been adhered to there would obviously have been no basis for the assertion of a right of home rule or local freedom in the conduct of governmental affairs of the county. But the spread of democratic ideas led, as has been noted, already in the colonial period to the election of county officers by the county electors, in place of their selection by the state authorities. We find, therefore, in this country very early in the development of local government the origin and spread of the idea that the right of selection of county officers is properly a county matter, and this as has been pointed out crystallized very generally into constitutional provisions insuring this local selection.

It is to be noted, however, that the right of local selection of officers developed without reference to the character of the duties these officers had to perform, as the original functions of the county in the fields of judicial administration, finances, highways, and poor relief, were still regarded as state rather than local concerns. Hence grew up the anomalous situation of the local control of officers who were in theory supposed to be state officers. It is very doubtful, therefore, whether the local control over county officers could be regarded as a legitimate

and proper application to counties of the identical principle with regard to cities, since the latter were from the first created distinctly for the satisfaction of local as distinguished from general needs.

If it is intended to go still further in applying the analogy of cities by giving counties the right to determine their own framework of government and to exercise powers free from legislative control, such a proposal can be considered sound only so far as the county may be said to be engaged in functions essentially like those performed by cities. As a matter of fact, as has already been remarked, counties have tended to approach more and more the position occupied by cities as regards their functions. In a growing number of states counties are accorded by constitution or by law a local ordinance power over matters of public health, safety, and morals, the local police power in the broad sense. In some cases also they are given authority to grant franchises to public-service corporations. In the field of public works, chiefly bridges, roads, and county buildings, but including also other undertakings, comprised under the general designation of public-service enterprises, counties are developing an ever increasing activity, while education has been seen to be a function of county administration to a greater or less extent in all but the New England states. As far as the range of activities is concerned, therefore, it would seem that counties are following more and more in the footsteps of cities, though of course the extent of activities within each class is much less than that developed in the municipalities.

It would seem, therefore, that under present conditions and especially in view of manifest tendencies, the plea for home rule for counties would stand, in a number of states at least, on the same ground as the home-rule plea

for cities. Two factors must not be overlooked, however, which differentiate counties from cities in this regard. In the first place counties are still chiefly occupied with matters of state concern, particularly in police, elections, judicial, and finance administration. Therefore both the form of organization and the powers of the officers are of more moment to the state than is the case in the cities. In the second place, it must be remembered that the typical American county is an area of large extent and small population. Cities are characterized by congestion of population and city problems are similar in kind, though differing in degree, in the largest and the smallest cities. Consequently we find the home-rule charter privilege extended in a number of states to all cities, whatever their size, or at least to all communities which are large enough to manifest urban conditions. Even a city of ten thousand inhabitants may be said to have its own peculiar problems which can best be solved by local initiative. But a county of ten thousand inhabitants spread over an area of five hundred square miles, and there are hundreds of such counties scattered throughout the United States, represents quite a different governmental problem. Local needs are relatively less pressing and relatively much more expensive to satisfy. Consequently state interests overshadow local interests and local autonomy is less important than central aid and supervision. Therefore the grant of home-rule charter privileges might well be made dependent in the case of counties upon the attainment of a certain minimum population, a minimum density of population, and a minimum assessed valuation.

It may indeed be questioned whether the optional charter plan is not preferable in the case of counties to the complete home-rule charter plan. As long as the

county plays such an important part in the judicial system of the state any scheme of county government must make proper provision for the performance of those functions and the legislature could easily combine the necessary provisions in these regards with a liberal variety of forms of machinery for the performance of local functions.

Finally it must be pointed out that far reaching improvements in the machinery of county government cannot be hoped for by means of the county home-rule charter road, any more than by any other road, unless and until the complicated machinery imposed by constitutional provisions on existing counties is modified. Neither California nor Maryland, as has been noted, relieved the counties of the necessity of electing such officers as sheriff, coroner, recorder, clerk, district attorneys, and other officers charged with the performance of state functions. Until the rather feeble political energy of the county electorate, which is now concerned chiefly with the selection of these officers, can be concentrated on the matter of choosing officers who deal with matters of distinctly county concern, it may be questioned whether a larger measure of home-rule for counties would not mean an even larger measure of misrule in that large proportion of counties where local matters are of relatively slight importance. On the other hand, it may be predicted, judging from the experience of cities, that the very grant of home-rule privileges would stir the now latent interest of county electors to its first real activity. It is possible that active, wide-spread interest in the problem of county reform in this country can be hoped for only as the result of striking innovations undertaken by individual counties under home-rule charter powers. Experiments can be tried by individual coun-

ties or cities under such powers which the legislature of any state would hesitate to apply to all counties or cities in the state. Much may be said, therefore, in favor of county home-rule as a means of stimulating interest in and study of the county problem, irrespective of any improvement resulting immediately from the adoption of this plan.

State Control.— While the county home-rule movement is a product of the last decade in the direction of giving counties larger powers and greater freedom in certain respects, there has been going on at the same time a further strengthening of state control over counties in other respects. This development, which, it will be remembered, began in the latter half of the nineteenth century, has made itself particularly felt in the last decade in the field of public finance. The creation of new state tax commissions and boards of equalization with larger powers over local assessment has marked an advance in a number of states,[10] while other states have increased the powers of existing boards, substituting in some cases a single commissioner for the earlier board. In Indiana the state commission is now given power of removal over local assessors. In Alabama and North Dakota county supervisors of assessments are provided for, and several states,[11] have recently authorized the employment of experts. The movement for uniform public accounts has made substantial progress in the last decade and county accounts are now subject to some state supervision in the majority of states, and several states have recently followed the lead of Ohio, New York, and Indiana in requiring uniform financial reports from all local districts.

[10] As in Alabama, Utah, and North Dakota.

[11] Among them Arizona, New York, and Washington.

Interesting developments have occurred also in other fields of state control. The powers of the state education authorities over local districts have been enlarged materially by legislation of the last ten years, particularly in those states which have adopted a reorganization of their state administrative system. In Idaho, one of the states to undertake extensive administrative reorganization, the creation of a state department of law enforcement with the power to enforce all the penal and regulatory laws of the state in the same manner and with like authority as the sheriffs of counties marks a distinct step in advance of the control over law enforcement by the local areas. In public-health administration, likewise, the last ten years have seen a marked increase of central control in a number of states over local health officers. This tendency has been aided by the emphasis placed by the Federal Government upon public-health conditions in communities adjacent to the military training camps during the war.

In general it may be said that the movement for the reorganization of state administration which has shown such marked vigor in the last few years almost inevitably carries with it as a consequence of improvement in state administrative methods the probability of ever larger supervision and control over local areas. It is true that so far no plan of state reorganization has gone to the length of creating a special department of local government, on the model of the former English Local Government Board, for the general supervision of subordinate areas. But it is not impossible that such a development will follow. It will be recalled that one of the criticisms directed against the English system of central administration control was that such control was exercised over local areas by no less than five distinct departments. The

creation of the New Ministry of Public Health in 1919 seems to point to a still further diffusion of functions of control in England as the control over poor relief and over finances is not to remain with this successor to the Local Government Board. There are no doubt serious difficulties in the way of centralizing all powers of control in a single board, commission, or officer, as is done to a certain extent in continental Europe, since local areas engage in a number of different activities, each of which, so far as it is a matter of state concern also, is entrusted to a separate administrative department. But there are many phases of state control over localities that could advantageously be combined in the hands of a single authority under the direction of the governor of the state, and this would seem to be a logical development to expect from the progress of state administrative reform.

New Activities.— Of considerable significance is the enlargement of the field of action of counties within the last ten years. Attention has already been directed to this point, but it may be repeated here that these new activities are of considerable social significance, that is they are positive welfare undertakings. County parks, county war memorials and community houses, county libraries, and mothers' pensions, are all illustrations of the tendency to humanize county government. In 1912 nine states authorized counties to employ farm experts for advisory and demonstration work, and a few years later the work was enormously extended as a result of the funds available from the Federal Government under the Smith-Lever Act. It need scarcely be repeated that further development along the lines of social and economic welfare work by counties will only be possible in connection with state or Federal aid to counties. But such un-

dertakings are serving in many instances to bring for the first time the county into relation with the vital interests of its inhabitants. Finally may be mentioned the tendency to transfer to counties in some parts of the country functions that had formerly been left to the rural subdivisions, but which the more complex conditions of modern life make it inadvisable to leave to these feebler units.

County and City Consolidation.— The last ten years have seen a marked interest in the movement for readjustment in the relations of large cities and the counties in which they lie. The situation in a score or more of the largest cities in the country in this respect is full of interest.

In New York City the situation is unique in that there are five counties within the limits of the city. The fiscal functions of these counties have been largely transferred to the city government, but the counties remain for judicial purposes with their own elective officers. In 1918 the functions of the coroners were transferred to the medical examiner appointed by the mayor. The recent proposals to the legislature and in the constitutional convention to abolish the counties altogether and to transfer their judicial functions to officers under city control seem to embody the obvious solution to the problem of duplication and diffusion of powers.[12]

Chicago presents an excellent instance of wastefulness and confusion in local government in which the only solution seems simplification by consolidation. As has already been pointed out there are operating in Chicago no less than thirty-eight distinct local governments. These comprise the County of Cook; the Forest Preserve

[12] See Bruere and Wallstein, *Study of County Government within the City of New York*, 1915.

District, identical in area with the county; the Sanitary District of Chicago; the City of Chicago; fourteen Towns; seventeen Park Districts; a Library Board; the School District; and the Municipal Tuberculosis Sanitarium Board. In Cook County outside of Chicago, there are no less than 355 local governments, half of which are school districts, 69 villages, 24 towns, 8 cities, 11 park districts, 27 drainage districts, 16 high-school districts, and 29 library boards. The area of Chicago is 200 square miles, that of Cook County 993 square miles. The population of Chicago in 1910 constituted more than ninety per cent of the population of the county, and the assessed valuation of the city was 92 per cent of the total assessed valuation of the county. There are 79 elective officers for Cook County and within the City of Chicago there are 417 officials chosen by popular election. A more striking example of complexity could hardly be imagined.

A movement for unification originated as early as the constitutional convention of 1870 when a provision permitting cities of more than 200,000 people to be organized as separate counties was at one time agreed to but later stricken out. In 1904 a constitutional amendment was adopted authorizing special legislation for Chicago subject to a local referendum and the consolidation of local governments entirely within the city, but not for consolidation of the county or outside areas with the city. Two legislative proposals providing for unification within the city have been defeated on referendum. But recently more thorough proposals for unification have been made. Among these is the proposal to constitute the City of Chicago a city and county for itself. This plan does not provide, however, for the union of the suburban areas which properly belong to the metropolitan area. It has been estimated that local government consolidation in

Chicago would save more than $3,000,000 a year now wasted in useless duplication.[13]

In Philadelphia the city and county have been coterminous since 1854 when a consolidation act was passed enlarging the city limits so as to include the county, absorbing nine incorporated districts, six boroughs and thirteen townships. A number of county officers were discontinued, namely the county commissioners, the treasurer, and auditor, their functions being tranferred to city officials, but the identity of the county was preserved and a number of elective county officers were retained, including the judges, register, recorder, clerk, district attorney, and coroner. In spite of frequent changes in the Philadelphia charter, including a radical revision in 1919, the courts and county officers have been retained and include judges, district attorney, sheriff, prothonotary, register and clerk of the orphans' court, recorder, clerk of the quarter sessions, treasurer, controller, receiver of taxes, coroner, and solicitor. The desirability of merging city and county officers and functions completely in Philadelphia has been recognized and proposals therefor advocated within the last year, to be presented to the Governor's Commission on the Constitution.[14]

Detroit, now the fourth city in the United States, presents another case in point for consolidation. Here the city covers an area of only 47 square miles out of a total of 620 square miles in Wayne County. But the population of the city in 1910 was almost nine-tenths of the

[13] For an excellent discussion of the problem of local government in Chicago and Cook County see Bulletin No. 11 prepared by the Illinois Legislative Reference Bureau for the Constitutional Convention of 1920. The pamphlets of the Chicago Bureau of Public Efficiency in the last ten years have clearly set forth the evils of the present complex system and the need for consolidation.

[14] See Bulletin No. 11, Illinois Constitutional Convention, p. 962.

total population of the county, and the enormous increase of the city's population in the last decade, has made the proportion even larger. The Michigan constitution of 1850 had authorized the legislature to organize any city of more than 20,000 inhabitants into a separate county, subject to approval by the voters of the county. In 1908 this provision was amended to apply to cities of over 100,000 only, but the constitution did not permit the abolition of the elective county officers of sheriffs, clerk, treasurer, register of deeds, prosecuting attorney, etc., nor make any provision for the union of city and county offices. Although the same duplication and conflict of political forces exist in Wayne County and Detroit as in other metropolitan centers, there has apparently been no organized movement for putting into execution the legislative authority to organize the city as a county.

In Cleveland, Ohio, on the other hand, there has been of recent years a determined effort waged by the Civic League to secure a constitutional amendment permitting consolidation of city and county government there. The area of Cleveland is something over 50 square miles, as compared with an area of 463 square miles for the whole of Cuyahoga County, while the population of the city in 1910 constituted very nearly nine-tenths of the population of the county. Constitutional amendments permitting city and county consolidation were introduced into the legislature in 1917 and again 1919 but failed of adoption, largely on political grounds.[15] The advantages of consolidation for Cleveland have been clearly set forth in the pamphlets of the Cleveland Civic League. In Cuyahoga County there are 93 political units electing more than 800 public officers. About half of the area

[15] See Dykstra, "Cleveland's Effort for City-County Consolidation," *National Municipal Review*, October, 1919, pp. 551–556.

and ninety-eight per cent of the population is included within municipalities. The City of Cleveland is hemmed in on every side by incorporated suburban cities and villages. The situation is, therefore, very similar to that in Chicago, and it is estimated that a saving of 20 per cent in the cost of government could be effected by consolidation, or rather by the establishment of Cleveland and its suburban area as a city-county unit.

Another city in Ohio which would be aided in its plans for city-county consolidation by the passage of the proposed amendment is Cincinnati, in Hamilton County. Here the city occupies a larger proportion of the area of the county than is the case with Cleveland, some 70 square miles out of 407, and it contained in 1910 about 78 per cent of the population. The movement for consolidation, therefore, is receiving active support in Cincinnati also. Other cities in Ohio face the same problem to a lesser extent.

St. Louis was separted in 1876 from St. Louis County under provision of the constitution of 1875 which also gave the city the right to frame its own charter. The city became the proprietor of all county buildings and property within its enlarged limits, assumed the whole of the existing county debt and was exempted from all county taxation. The city became entitled to the same representation in the General Assembly, collected the state revenue and performed all other functions in relation to the state as if it were a county, though it was not designated as the city and county of St. Louis. The area of St. Louis is now 61 square miles, while the area of St. Louis County, to which it formerly belonged is 487 square miles, with an estimated population in 1913 of 93,000. Under the constitutional provision permitting the separation of the city from the county the two areas

together continued to constitute one of the judicial circuits.[16]

The Missouri constitution contemplated the further application of this principle of separation of large cities from the counties in which they lie by providing that in all counties having a city therein of over 100,000 inhabitants the city and county government might be consolidated in such manner as might be provided by law. This provision is now applicable to Kansas City which in 1910 contained nearly ninety per cent of the population of Jackson County. The area of Kansas City is 60 square miles while that of the county is more than ten times as large. This represents a situation that is fairly typical of the relation between the cities of more than 250,000 and the counties in which they lie. The obvious solution of unnecessary duplication and overlapping jurisdictions of city and county in such cases would seem to be the one adopted in the case of St. Louis, namely the taking of the city completely out of the county.

In Boston there has been a partial consolidation of city and county functions with reference to Suffolk County in which Boston lies. There the city comprises not only more than nine-tenths of the population of the county but also more than nine-tenths of the area of the county. Boston has title to all the property of Suffolk County and pays the entire expense of administration, the financial officers of the city acting in the same capacity for the county. But there remain some independently elected and some appointive county officials for judicial purposes. The situation there would seem clearly to call for complete consolidation of city and county. Uni-

[16] See, Young, "Scheme of Separation of City and County Governments in St. Louis," *Proceedings of American Political Science Association*, February, 1912, pp. 97–108.

fication, it would seem, ought to go even farther than that, however, since metropolitan Boston, comprising an area of 417 square miles with thirty-nine different municipalities in five different counties, is really a single community with need for a unified government. The control of certain functions in this area has been centralized in such commissions as the metropolitan park commission and the metropolitan water and sewer boards, but the need is for complete unification. Within recent years proposals for the consolidation of the metropolitan district into one municipality have been introduced as bills in the legislature, but they have not contemplated the abolition of the county units within the district. This would seem to be a necessary feature of any adequate reorganization scheme.[17]

Baltimore was separated from Baltimore County as far back as 1851 and has been in all respects a distinct county ever since, portions of the county being cut off successively and added to the city as the urban area expanded.[18] Under the 1915 home-rule amendment to the Maryland constitution the privilege of framing and adopting charters has been extended to the City of Baltimore as well as to the other counties of the states.

San Francisco followed in the footsteps of Baltimore five years later when the City and County of San Francisco was created. There are some distinctly county officers such as county clerk, auditor, district attorney, sheriff, and coroner but they are elected by the people of the city and exercise jurisdiction in the limits of the corporation only, which has an area of 43 square miles. There

[17] See Hornell, "Boston's County Problems, *Annals of the American Academy of Political and Social Science,* May, 1913, pp. 134–152.

[18] See McLaughlin and Hart, *Cyclopedia of American Government* (New York, 1914), "Baltimore."

would seem to be no justification in having these county officers survive but they are required by the constitution for every county.[19]

The California constitution was amended in 1894 to permit the merging and consolidation of city and county governments into one municipal government and subsequent amendments extended the right to frame home-rule consolidated charters to cities having more than 50,000 inhabitants, regulating the procedure in detail. Los Angeles has recently taken action looking toward the consolidation of the city and the county governments under these provisions of the constitution.[20] The City of Los Angeles now has the largest area of any city in the United States, 339 square miles, due to recent annexations, but it still comprises considerably less than one-tenth of the area of Los Angeles County. Even in 1910 before the large annexations of surburban territory it comprised more than three-fifths of the population of the county. The logical development in this case, therefore, involved the separation of the city from the surrounding county, as in Baltimore and St. Louis, and its erection as a city and county corporation, rather than the merging of the city with the county as in New York and Boston.

Another interesting development has occurred in California in Alameda County, which represents still another phase of the county-city problem. There are ten separate municipalities in the county, which in 1913 had a population of 283,798 and an area of 732 square miles. Of this population about nine-tenths were living in the ten incorporated municipalities, the largest of which, Oakland, had at that time something over 150,000 inhabitants.

[19] See Long, "Consolidated City and County Government of San Francisco," *Proceedings of the American Political Science Association*, February, 1912, pp. 109–121.

[20] See the *American Year Book* for 1918, p. 246.

For the last ten years the Tax Association of Alameda County has been working on a plan for a scheme of government which would eliminate useless duplication, cut down expense, and make possible united activities without doing violence to the local pride and independence of the constituent municipalities.[21] The proposals put forward by the Association involve the creation of a federated county, similar in some respects to the plan under which the County of London is governed. A governing body of twenty-one councilors elected by districts would have jurisdiction over all matters that affect the county as a whole, such as police, fire, and health protection, as well as schools, the assessment of property and the collection of taxes, and auditing and the purchase of supplies. Water supply, sewerage, and the control of public utilities for the entire county, are also put under the jurisdiction of the board of supervisors. All justice and police courts are abolished in favor of an organized municipal court for the whole county. The cities and surrounding territory remain as boroughs, each with five members on the board, and retain jurisdiction as to local works and the levying of taxes. The actual administration both in the county and in the boroughs would be in the hands of experts chosen under civil-service rules and regulations, the chief administrative officer of the county being a manager.[22] An amendment to the California Constitution, adopted in November, 1918, permits the adoption of this plan by the county, so that it

[21] See Requa, "The Government of Alameda County," *Annals of the American Academy of Political and Social Science*, May, 1913, pp. 237–247, for a description of Alameda County and the conditions prevailing there which led to the reform movement.

[22] See the pamphlets of the City and County Government Association, Oakland, California, 1916–1919. Also a brief description in Gilbertson, *The County*, pp. 159–163.

is now within the power of the county to give this experiment a trial.

The federation plan urged in Alameda County would be applicable to the solution of the city-county problem in other counties presenting a like situation, namely, where a county is largely urban but comprises a number of independently developed municipalities which would not consent to incorporation with the largest one. This condition is found for instance in the two largest counties in New Jersey, Hudson and Essex Counties.[23]

New Orleans is the only city besides New York which contains a county completely within it, as the Parish of Orleans lies within the city, and is identified with it in the Census population statistics. Some of the regular parish officers are lacking in the Parish of Orleans, notably the police jury and the constables, but there are special parish officers such as the sheriffs, tax assessors, register of conveyances, recorder of mortgages and judicial officers.[24] This would seem to offer a clear case where complete consolidation of city and county would be desirable.

The last city to be considered in which there has been accomplished a union of city and county governments is Denver, Colorado, which by an amendment to the state constitution adopted in 1902 was declared to be a single body politic and corporate by the name of the City and County of Denver. The amendment abolished the dupli-

[23] See for a description of Hudson County with proposals for federation and consolidation, Crecraft, "The Government of Hudson County" (Jersey City, 1915), comprised in the collection of *Documents on County Government* of the National Short Ballot Organization.

[24] See Scroggs, "Parish Government in Louisiana," *Annals of the American Academy of Political and Social Science,* May, 1913, p. 43.

cate sets of county and city officers within the new corporation by making the existing county officers, officers of the City and County of Denver. But owing to litigation in the courts the new scheme was first sustained then set aside and again sustained, being finally settled in favor of the consolidation provision in 1911. The consolidation of city and county officers in Denver seems to have proved its wisdom in spite of very turbulent political conditions in the last decade.[25]

The list of cities in which the city-county consolidation project has become a live issue within the last few years includes most of the other cities with more than a quarter of a million inhabitants, and some that are smaller. Among these may be mentioned Buffalo, Rochester, Pittsburgh, Kansas City, Indianapolis, Portland, and Seattle.[26] In these cities the problem is rather one of separation of the city and its surrounding territory from the county,

[25] See Guthrie, "The City and County of Denver," a paper read at the Detroit meeting of the National Municipal League in November, 1917, printed in pamphlet form by the National Municipal League and comprised in the collection of *Documents on County Government*.

[26] The following table will show the relation between the area and population of the cities mentioned and the counties in which they lie:

City	County	City Area, 1916, sq. m.	Area, 1910, County sq. m.	Percentage of Population in the City, 1910
Buffalo	Erie	42	1,034	80
Rochester	Monroe	24	663	71
Pittsburgh	Allegheny ..	41	725	52
Kansas City ...	Jackson	58	610	87
Indianapolis ..	Marion	40	397	88
Portland	Multnomah .	66	451	91
Seattle	King	91	2,111	83

and its establishment as a city-county unit, than one of true consolidation as in Philadelphia, San Francisco, and Boston, as the city comprises but a relatively small portion of the area of the county, though a relatively large proportion of the population.

There remain three cities in the list of the first twenty-five, according to the 1910 Census, which have not been mentioned. These are Milwaukee, Washington, and Minneapolis. Milwaukee County presents a fearful picture as regards organization, there being 43 elected county officials in addition to 89 city, state, and national officials elected in the city.[27] The City of Milwaukee in 1916 comprised an area of 26 square miles as compared with 235 square miles for the county as a whole. The city in 1910 contained 85 per cent of the population of the county. It presents a situation essentially similar, therefore, to the one found in the other cities considered and the question of consolidation, though not touched upon in the 1915 report has since been investigated by the City Club.

Washington, D. C., although under a peculiar form of government as the capital of the nation, presents another instance of a failure to carry consolidation of agencies to its logical conclusion both as to the courts and as to matters of local administration.[28]

Minneapolis presents another typical instance calling for separation of city from county, and yet although the constitution of Minnesota has contained a provision since 1857 permitting the legislature to organize any city of

[27] See "Milwaukee County Government," Bulletin of the Milwaukee City Club, 1915, comprised in the collection of *Documents on County Government* of the National Short Ballot Organization.

[28] See Bulletin No. 11 for the Illinois Constitutional Convention, of 1920, pp. 963–965.

more than 20,000 inhabitants into a separate county, no action has apparently been taken with regard to either Minneapolis or St. Paul in this direction.

Finally attention may again be called to the fact that in Virginia all cities, and that means incorporated places of more than 5,000 inhabitants, are separate from counties and themselves perform county functions to a large extent.

From the preceding survey of the situation as regards county and city consolidation in the twenty-five largest cities of the country, it may be seen that there is a measure of consolidation provided in a considerable number of them, and that within the last few years a decided trend in that direction has made itself noticeable. The failure of the proposed constitutional amendment in Oregon in 1919, the partial and unsuccessful attempts in Cook County in 1907 and 1913, and the so far successful opposition to the Ohio proposals, cannot alter the fact that the movement for readjustment of city and county relations in the larger cities of the country has gained a very definite momentum within the last ten years, a momentum which in all likelihood will result within the next few years in making the city-county organization a typical one for cities of more than 200,000 population which constitute the outstanding municipality in the county. Where a number of independently developed, sizeable communities exist in a county the federated county on the Alameda plan seems to offer a promising scheme for reorganization.

Agencies for the Study and Reform of County Government.— Not the least important of the developments of the past decade in the field of county government are the agencies that have developed for the study

and reform of county government. Ten years ago the subject of county government in the United States was indeed the unexplored and "dark continent of American politics." Almost the only persons who were interested in or acquainted with county government were the politicians who thrived thereon. Local, state, and national reform associations had developed and multiplied in the field of city government and the literature of that subject was extensive. City Clubs, tax associations, research bureaus, state conferences, national associations, were included among the numerous agencies of city government reform, and the leading universities of the country were beginning to offer special courses in the study of municipal problems. But nothing of the kind existed in relation to county government. With a single exception, no comprehensive general description or discussion of American county government was available.[29] No local associations of citizens were concerned with the study and reform of county government. City Clubs and research bureaus ignored the field of county government. State conferences on county government were unknown. The national political science and civic organizations all but passed by the subject of county government. University courses in county government were unknown.

In the brief period of the last ten years, however, all this has changed in an astonishing measure. City Clubs have extended their field of investigation into the county field.[30] Special local associations for the study and reform of county government have developed.[31] National

[29] Professor Fairlie's book on Local Government was first published in 1906.

[30] As in Cleveland, Ohio, and Milwaukee, Wisconsin.

[31] As for instance the Alameda County Taxpayers' Association in California, the Westchester County Research Bureau, and the Nassau County Association in New York.

research agencies have gone into the study of the county field.[32] State conferences on county government have been held,[33] national and municipal reform agencies have broadened their scope to include specifically county government as a field of activity,[34] general governmental reform agencies are concentrating their energies on county government[35] national political science associations have devoted special attention to the county problem,[36] and even universities are commencing to recognize the importance of the county by offering special courses in county government.[37] The University of North Carolina has recently undertaken to stimulate interest in the problems of the county by organizing home-county clubs throughout the state.[38]

As a result of this general awakening the literature on county government has developed in the last years to the point where intelligent study and investigation have been made possible, at the same time that a more general interest in the problems of county government has been aroused. The effect of this development on the future of county government in the United States, of course, cannot be definitely foretold, but that it will be considerable, if the next ten years show as much advance in

[32] As the New York Bureau of Municipal Reasearch, the Russell Sage Foundation, and the Chicago Bureau of Public Efficiency.

[33] The Conferences for Better County Government in New York State.

[34] The National Municipal League and the American City Bureau.

[35] The National Short Ballot Organization.

[36] The American Political Science Association at its eighth annual meeting in 1911, and the American Academy of Political and Social Science in its special volume on *County Government*, 1913.

[37] Among them may be mentioned the University of Texas, the University of Michigan, and the University of Illinois.

[38] See the University of North Carolina Bulletin containing the "Syllabus of Home-County Club Studies," September, 1914.

the directions noted as have the last ten years, can hardly be doubted.

City Government

In the field of city government the developments have been no less significant, though perhaps not so startling as in the field of county government. They may be conveniently considered under much the same heads as were those in the latter category.

Home Rule.— Ten years ago only eight states had granted to cities the right to frame and adopt their own charters,[39] although thirty-five years had elapsed since the first state took such action. In the last decade five more states have taken such action [40] and in three more states [41] the legislature has approved home-rule amendments which will have to be passed again before submission to the voters.[42] Furthermore three or four states have within the last ten years granted or attempted to grant the home-rule charter power to cities by legislation,[43] though in Wisconsin the act was held invalid as an unconstitutional delegation of legislative power. Finally a dozen states have passed optional charter laws permitting cities to choose which one of several forms of charter they wish to adopt.[44] Of the two hundred or more cities that have adopted charters under these constitutional home-rule provisions, the largest number have done so in the last ten years.

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[39] Missouri, California, Washington, Minnesota, Colorado, Oregon, Oklahoma, and Michigan.

[40] Arizona, Ohio, Nebraska, Texas, and Maryland.

[41] New York, Wisconsin, and Pennsylvania.

[42] The rejected New York Constitution of 1915 contained home-rule provisions.

[43] Connecticut, Florida, Wisconsin, and New York.

[44] Among them New York, Massachusetts, North Carolina, and Virginia.

The movement for constitutional home rule in cities may therefore be said to have made almost as much progress in the last ten years as it had in the preceding thirty-five.

Charter Reform.— It has already been pointed out that the most interesting development in the field of charter reform in American cities is the origin and development of the commission-manager plan, which is wholly a product of the last decade. Aside from the rapidity with which this new type of government has spread,[45] the most interesting feature of its development is perhaps the fact that in the last years it is being adopted by an increasing number of larger cities, that is cities of more than 50,000 population. Until 1915 Dayton, Ohio, was the only city with more than 50,000 inhabitants operating under this plan. By 1920 there were nine such cities, and two more were added in that year. Four of these cities had a population of more than 100,000 in that year. It is now being seriously agitated in other cities of more than 100,000 and its spread in that class of cities seems certain.

Commission government, on the other hand, which had its origin and early development in the preceding decade, having been adopted by over a hundred cities in 1910, although it attained its most rapid growth in the first half

[45] The growth in the number of cities operating under the city-manager plan is shown by the following table compiled from figures given in the annual statements in the *American Year Book:*

1913	12
1914	33
1915	37
1916	19
1917	23
1918	31
1919	36

In 1920 some twenty-five cities were added to the list.

of the present decade, has suffered a marked check in its further spread the last five years chiefly owing to the appeal made by the commission-manager plan. Only seventy-five cities adopted commission government in the years 1916-1919 and that was largely limited to cities which were not empowered to adopt the manager form. All indications point, therefore, to an ever smaller number of cities adopting commission government, as well as to the steadily increasing shift from that type to the manager form.

But the increase of commission and commission-manager charters is not the only feature worthy of note in the charter development of the last ten years, for among cities operating under the mayor-and-council form, and that, as has been seen, includes the great majority of American cities, especially of those having as many as two hundred and fifty thousand inhabitants, there have been many notable charter developments. Some of the more important of these developments may be briefly mentioned here.

In 1910 there went into effect a new charter for the city of Boston which marked some extreme changes in the system of city government. Instead of the bicameral council provided under the charter of 1904, comprising 75 councilmen and 13 aldermen, there was provided a single chambered council of nine members elected at large on non-partisan ballots. The importance of the mayor was greatly increased under the new charter. He was given a large appointing power, free from the participation of the council which had existed under the earlier charters. The only check upon the appointing power of the mayor with regard to heads of departments and city commissions was provided in a novel device which requires the mayor to file a certificate for transmission

to the state civil-service commission to the effect that the nominee is a recognized expert in his work or is especially fitted by education, training, or experience for the post. The state commission may refuse to approve of the appointment as not meeting the specifications, in which case the appointment lapses at the end of thirty days and the mayor must submit another name. But the mayor may remove such officials without concurrence by the civil service commission. Appointments to subordinate positions are subject to the state civil service commission in all Massachusetts cities. The mayor under the new charter drafts the budget alone and the council may make no changes except by way of reduction. In the abolition of the bicameral feature, in the reduction in the size of the council, in the substitution of non-partisan nomination and election for the former party procedure, in the substitution of a general ticket for ward elections, and in the material strengthening of the powers of the mayor, therefore, this new Boston charter was very significant as indicative of the approved lines of municipal organization. The small council and election-at-large feature have, however, been repeatedly attacked by the politicians, and in 1920, the legislature of Massachusetts passed a bill increasing the membership of the council and making them elective by districts. The bill was supported by both the Republican and Democratic organizations in Boston and the Governor signed the bill in spite of protests of the Boston Charter Association, the Chamber of Commerce, and the Good Government Association, on the ground that the provision for a local referendum in November, 1920, on the proposed changes put it up to the voters of Boston.[46] These proposals were defeated at the polls at that election.

[46] *National Municipal Review*, July, 1920, p. 456.

The salient features of the Boston charter of 1909 as described above were reproduced in the charters of Pittsburgh, Seattle, and Los Angeles within the next two years.

In 1913 Cleveland adopted a new charter under the home-rule powers accorded by the constitutional amendment of the preceding year. The council was reduced from 33 members to 26, elected one from each ward by non-partisan primaries and elections by means of the preferential ballot. The initiative, referendum, and recall are provided, as is also the civil-service merit system for subordinate employees, the mayor having the power to appoint and remove the directors of the six departments.

In 1914 St. Louis adopted a new charter. Here, as in Boston, a bicameral council was superseded by a unicameral council, the 28 members of the house of delegates and the 13 in the council being replaced by a single body of 28 members, one to be from each ward but elected on general ticket, a unique feature in American charters. The initiative, referendum, and recall were included in the charter, but the state laws did not permit the insertion of non-partisan nominations and elections. The St. Louis charter, therefore, also reflected, though to a lesser degree than did the Boston charter, the tendency toward simplification of the council organization. By a law passed in 1913 the appointment of the police board in St. Louis was taken from the Governor and given to the mayor. The latter was also permitted to remove members of the board. If the Governor, who also retained the removal power, removes the whole board, he may name the new board.

In the same year a home-rule charter was adopted by Columbus, Ohio, which reduced the size of the council

to seven members, elected at large on a non-partisan ballot. The independently elected mayor was retained but his veto over the action of the council was made purely advisory.

Another Ohio city to adopt a home-rule charter in 1914 was Toledo, which adopted the so-called "federal plan" provided in the law of 1913 and followed by Cleveland in its charter of the preceding year. The only elective officers are the mayor, vice-mayor, and councilmen. The mayor has the power of appointing and removing the six department heads. The newer features of non-partisan preferential ballots, and the initiative referendum, and recall were all included in the new charter.

In 1918 Detroit adopted a new charter which added that city to the list of those reducing the size of their council. Instead of 42 aldermen elected by wards the new council consists of nine members elected at large. Non-partisan primaries and elections are provided for as also the initiative, referendum, and recall. The mayor appoints and removes all boards and commissions, except that he may not remove the civil-service commission, and is responsible for the budget, seven adverse votes in the council being required to prevent his putting the budget into effect. Here also, therefore, the strong-mayor type is combined, as in Boston, with the small council elected at large.

Other charters or amendments adopted in 1918 which reflect some or all of the tendencies noted were those of Akron, Ohio, which reduced the council to eight members elected at large on non-partisan ballots and included the initiative, referendum, and recall, as well as the appointment of chief administrator who is for all practical purposes a city manager; and Milwaukee, Wisconsin, in which the

council was reduced from 37 members to 25. The new charter adopted in the same year by Baltimore under the home-rule amendment of 1915 introduced no new features except the application of the civil-service merit system.

Finally in 1919 a new charter was enacted for the City of Philadelphia, as has been noted elsewhere. It will be well to point out here again, however, that in the abolition of the bicameral council, and especially the reduction of the size of the council to 21 members, the latest metropolitan city charter follows in the footsteps of Boston, St. Louis, and Detroit and other large cities securing new charters within the decade. The councilmen are not elected at large, however, nor on the other hand are they elected by the old wards, but from the eight senatorial districts in the city, on the basis of the number of the assessed voters in each. In the strengthening of the mayor's powers over the budget, and in the adoption of a rigid civil-service merit system the Philadelphia charter follows along the lines established by these other charters.

To sum up then, charter activity during the last decade among cities retaining the mayor-and-council form clearly shows the following tendencies: the abandonment of the bicameral principle; reduction in the size of the council; abolition of the ward system of election; introduction of non-partisan nomination and election combined with preferential ballots; strengthening of the administrative and financial powers of the mayor; extension of the civil-service merit system; and spread of the instruments of popular control, the intiative, referendum, and recall. It seems likely, therefore, that these are the accepted lines along which modifications of the mayor-and-council type will occur in future charter changes.

New Activities.— Throughout the decade just past there has been manifest a general tendency to enlarge the activities of cities in the general direction of social welfare work, particularly in the matter of public recreation. City planning as a municipal activity has also developed general application only within the last ten years. Municipal ownership and operation of public utilities have also shown significant extensions and advance in new fields. Among the long established city activities public health has perhaps shown the greatest improvement within the last decade. The era of high prices combined with rigidly limited financial resources has undoubtedly checked to a considerable extent the entering upon new undertakings by cities during the last half of the past decade, but increased demands for service by cities will inevitably result in still further expansions, in spite of these deterring factors.[47]

Municipal Reform Agencies.[48]— Although the study and reform of municipal government had made gratifying progress during the decade from 1900 to 1910, much more substantial progress has been made during the ten years just past. The increase in the number of city clubs and citizens associations, the establishment of city research bureaus, the formation of state municipal leagues, increased emphasis on city government in the political-science teaching in our universities, and a phenomenal increase in literature on municipal government, have all characterized the decade just past much more even than the preceding one. That these various reform

[47] The annual volumes of the *American Year Book* since 1910 furnish a valuable record of the developments in municipal activities under such heads as Research, Budgets, and Finance; City Planning; Housing; Fire, and Police.

[48] See Munro, *The Government of American Cities*, Chap. xiv, for a discussion of municipal reform and reformers.

agencies have not attained maximum results is certain, but that the encouraging improvement in city government during the last generation has been directly due to the interest and energy of thousands of public spirited citizens, ridiculed as reformers, is equally evident. The price of successful government, no less than of liberty, is eternal vigilance and it is these various reform agencies which must be looked to to stimulate and direct the vigilance of the great mass of citizens. Their further spread and development may be regarded, therefore, in view of the record of the past ten years, as a consummation devoutly to be desired.

CHAPTER IX

CONCLUSION

We have seen as a result of the preceding survey of local government in the United States that there are in every state two kinds of local government. One of these is distinctly urban in character, that is, it is a government for relatively restricted areas with relatively dense population, the units being variously designated villages, towns, boroughs, or cities. These units are created primarily for the satisfaction of distinctly local needs, that is, needs which the people of the community have in common because of their very proximity. The other kind of local government found in every state of the Union is characteristically rural, that is, it is a government for relatively extensive areas with relatively sparse population, and is known all but universally as the county. This area of local government developed originally merely as an administrative unit of the state government, and is still regarded chiefly in that light, though it has come also to be accorded powers intended for the satisfaction of local needs.

In addition to these two types of local government, there is found in a considerable portion of the United States, a third form, intermediate between the two first mentioned, both as to area and as to its essential nature, which is commonly known as the township. Finally, there is a great variety of special local governmental areas for particular purposes, commonly known as districts, which may or may not coincide with the areas of

the urban communities or of the other subdivisions of the counties.

All of these units of local government are alike in this that they have locally elected officers to administer their activities. To that extent they are areas of local self-government, irrespective of the kind of functions they perform. They are alike in this also that they are wholly subject to the control of the state, a control exercised to a considerable extent by express constitutional provisions, both negative and positive; to an even larger extent by the state legislatures; and to a relatively small but continually increasing extent by administrative authorities of the state government.

The first question that naturally arises with regard to this rather complicated system of local administration is to what extent all these areas fulfill necessary functions. Their historical origin and development have already been fully considered and their existence in this country may be largely explained on the basis of inheritance and tradition. But the present day justification of this complex system must rest on other grounds than mere tradition.

The City.— So far as the urban areas of local government are concerned there seems to be adequate reason for constituting each distinct aggregation of population within a limited area a unit of local self-government. Cities are not merely historically governmental units but they are also naturally so. Some of the most important governmental needs either arise from urban conditions or are accentuated by them, as for instance police and fire protection, the preservation of public health, the provision of a water supply, street paving and sidewalks, etc. Community problems require community action and within the relatively restricted area of a city there is a

real possibility of developing community spirit and community patriotism, which are essentials for a successful democratic government. The community needs are most clearly realized in and by the community and it is the community that directly benefits by their satisfaction and directly suffers from their neglect. Therefore a logical scheme of government confers the largest possible powers of local self-government on urban communities. It is simply not possible practically to have a single central governmental agency charged with the administration of these local affairs, which in spite of their general similarity vary considerably in the different communities. This theoretical proposition has furthermore been demonstrated in a practical way in American experience through the failure of such minute and detailed legislative regulation of municipal affairs as has been attempted in a great many of our states.

If it be granted that a proper governmental scheme demands that communities be charged with the duty and power of regulating community affairs, a difficult question still remains in determining at what point such special local conditions arise as to warrant separate local machinery. We have already seen that village government exists in some of our states in communities with as few as a hundred inhabitants. In France, it will be remembered, the number of communes with less than that population runs into the hundreds, while in England some two thousand parishes contain less than a hundred inhabitants each. Both in England and in France there is a feeling that such diminutive communities are really too insignificant to warrant a local governmental machinery, and when it is remembered that a population of a hundred inhabitants normally means an average of only a score of houses, it is difficult to imagine any real com-

munity problems arising, even if all the houses were clustered about a cross roads. But when the population of a community attains five hundred, with a hundred houses within a restricted area, it seems equally clear that real community needs and problems may arise, though in a rudimentary form only, which justify a simple local governmental organization. At some point, therefore, between these two figures it would seem that a special local government organization would be desirable. As the population of the communities increases the nature and extent of the community needs develop and call for larger powers and more extended organization, but the principle on which a special governmental organization and a sphere of local governmental action are accorded to communities remains the same throughout.

Such semi-urban and urban communities must, however, be subjected to a measure of state control, since few if any of these so-called local functions are purely of local concern, as has already been pointed out. The line between local and central functions cannot be definitely drawn either in theory or practice, and indeed there is an almost imperceptible gradation from the activities of the community which seem to concern only itself, to those activities in which the community acts as the agent of the state government in matters of general concern. In general it may be said, however, that the larger the city becomes, the more intimately are the general interests of the state as a whole bound up with its activities. A larger measure of state administrative control should, therefore, properly accompany the larger measure of power that is accorded to the more important cities.

This state administrative control, as has previously been suggested, should for its effective exercise be to a large extent centralized in an agency established for the

express supervision of local governments, on the general plan of the French Ministry of the Interior, or of the former English Local Government Board. An adequate staff of experts who could investigate, advise, and, when necessary, control the action of the municipalities, would make it possible to enlarge the scope of action of cities very considerably beyond the extent to which they now possess it even in the so-called home-rule states, without the dangers which would attend the granting of extensive unregulated powers. These potential dangers have played no insignificant part in inducing state courts in various home-rule states to limit the extent of powers apparently intended to be conferred upon cities by the home-rule constitutional provisions.

If then all communities with more than two or three hundred inhabitants are to be supplied with more or less extensive machinery of local government, is there any need for other units of local government? Do the strictly rural portions of the states need any machinery for the satisfaction of local governmental needs? In other words are there in these rural areas any local needs as distinguished from the needs that are or can be satisfied by the central government? In order to answer these questions let us refer again briefly to the activities which are as a matter of fact undertaken by the American counties.

The County.— The judicial functions of the county, which are the most universal and important of the functions now performed by counties, are, as has been seen, in no proper sense local functions. They are clearly functions of state concern, and while the satisfactory administration of justice requires sufficiently numerous judicial districts so that access to the courts of law will be easy to all citizens, there is no necessary reason why the county

should be the district chosen. As a matter of fact in many states several counties are grouped into judicial districts for the lowest courts of general procedure, while in a number of instances there may be more than one judicial district within a single county. Furthermore, whether counties as now constituted are satisfactory judicial districts or not they are not properly units of local self-government for this purpose, since the judicial function is not a function of local government. Hence, as has already been pointed out, judicial officers should not be locally elected at all. In England the county courts, so-called, have no jurisdictional connection with the administrative counties, and in France the jurisdiction of the tribunals of first instance extends over the *arrondissements,* which are not local government corporations at all. In neither of these countries, furthermore, are the officers of the inferior courts chosen by popular election. The need of judicial districts in the states, therefore, has no necessary bearing on the question of the advisability of continuing the counties as units of local government.

The same is true of the matter of police protection in the rural districts. The American county is in no sense a natural unit for the preservation of peace, such as is the urban community. Police protection in the strictly rural areas is a state-wide, not a local problem. In a large state there will no doubt be a need for constabulary or police districts, but such districts need have no relation to present county lines nor is there any proper basis for any sort of local selection of the officials in charge of such districts. A state police or constabulary to patrol the rural districts, to be efficient, must be directly under the control and direction of a state officer.

Counties are now almost universally election districts for state legislators. But they are frequently grouped

for that purpose, especially in the election of members of the state senate, and are grouped in still other combinations for the constitution of congressional districts. In this respect also they are, of course, in no sense local government units.

Another important activity of American counties which is a function of state administration is the assessment and collection of state taxes. For this purpose also, the county constitutes no natural unit, and while the larger states would undoubtedly need revenue districts for the administration of state taxes, it is by no means clear that present county lines constitute the most natural or most convenient districts for that purpose.

The same considerations apply to the other county activities which may be grouped under the head of county functions of state administration, such as militia organization and the recording of deeds and other instruments. The county as we have it, is neither a natural nor, in many cases, a convenient area for these purposes. In all of the above mentioned respects the county is a district of state administration and not necessarily the most suitable district for such purposes.

What now of the so-called functions of local administration, most of which became of real importance long after the original establishment of counties for judicial, election, recording, and militia purposes?

Foremost among such activities ranks, as will be recalled, education. Is the county, like the city, a natural area for educational administration? That is, if the county were not already in existence, would any such area be created for purposes of educational administration? It would seem not, for county lines are never consciously established with any reference to the number of school children contained within them or to the accessibil-

ity of all parts of the county to any central institutions. As has been seen, in practically the whole of the United States the educational needs of the rural areas have been met, so far as they have been met, by the creation of special school districts, much smaller than the county and frequently wholly unrelated thereto. The weakness of these petty districts has already been pointed out and the need for larger areas of educational administration emphasized. In a number of states the county has been adopted as the most suitable existing district for more centralized administration. But it is by no means clear that any such district as the county would be selected if it were not already in existence. If the urban communities take care of their own elementary school needs, and in all but the smallest of them also of their secondary school needs, the strictly rural areas must be provided, of course, with proper facilities also. But the creation of proper elementary school districts and their correlation with the municipal educational facilities is a matter which could be handled very much more satisfactorily by the state educational authorities with reference wholly to the educational needs to be served and without regard to the existence of county divisions, which so far as this question is concerned are certainly purely arbitrary geographical divisions. A scientific division of the rural areas of the state into educational districts both for direct administration and for state supervision would unquestionably bear no relation to present county lines if these were not long established governmental boundaries. Similar considerations apply, of course, to other educational agencies, such as public libraries.

Highways and bridges are another of the so-called local concerns of counties. But counties are just as little natural or convenient highway districts as they are educa-

tional districts, a fact emphasized by the almost universal creation of smaller highway or road districts within the counties. The clear tendency in the last years, furthermore, is towards an increasing participation by the state government in the construction and administration of the main highways. It may be that special road districts are desirable for the improvement and upkeep of secondary roads, but it is clear that the county as at present constituted is not necessarily the logical agency for such administration.

Poor relief and the conduct of charitable institutions generally was another of the early functions of the American county which is still to a considerable extent intrusted to this unit of local government. But, as was pointed out in an earlier chapter, the problems of modern charity administration have far outgrown the capacity of the average county, and the state is cutting more and more and more into this field, so far as institutional care is concerned. Furthermore the cities tend to be saddled with an ever increasing share of the outdoor relief, as the poor tend to drift into the cities during the winter, either because the opportunities for finding employment are greater there or because the opportunities for getting alms are better. The county, therefore, does not in fact function well in the field of charities nor is it naturally adapted to that function.

One of the more recent of the activities of counties is in the field of public-health administration. But here again, the county as compared with the compact urban communities is not a natural unit for health administration. The problems of rural health administration are in no sense affected by artificial county lines. On the contrary they are much more state-wide than local in their scope, granted that each urban community, no matter

how small, is charged with caring for the health problems of its inhabitants. Rural health administration, like rural police protection, is, therefore, in its nature, more adapted to central administration, and the health districts which it may be necessary to create for convenient administration have no necessary connection with county boundaries as at present constituted.

It seems, therefore, that the American county is neither a natural unit for the administration of state affairs, nor does it constitute a natural division for the conduct of local affairs. The conclusion would seem to follow that while all compact settlements with more than two or three hundred inhabitants are natural and proper units for local government organization, the strictly rural population can have its administrative governmental needs more effectively filled by means of direct state administration. For, if it is true that the county is ill adapted to the performance of the functions entrusted to it in this direction, even more true is it, as has already been pointed out, that the non-urban subdivisions of the county, such as the townships in the Middle Western states, are ineffective areas of local government.

It is safe to assume, however, that the abolition of the county as an area of local self-government, though indicated as the most effective remedy for the weaknesses of the present system of local government in this country, is too radical a proposal to present possibilities as a practical program of reform, at least in the near future. It is necessary, therefore, to indicate briefly how improvements may be hoped for along more conservative lines. Here we are confronted with an apparent paradox, in that while it has been contended that the county is not well adapted to performing the functions it is now charged with, it seems to be true that if the county is to remain

as a unit of local self-government, progress must lie in the direction of conferring larger powers on the county than it now enjoys. The explanation of this apparent contradiction is, however, simple. As at present constituted, the county, except in connection with its police and judicial functions, which are not properly functions of local self-government at all, fails to arouse the interest of its citizens because of its apparent insignificance. Not only will competent persons not be attracted to county offices, but the rank and file of the voters will not even go to the polls where merely county officers are in question. If, however, the governmental machinery of the county is simplified and at the same time the functions of the county are enlarged, it is possible that a community consciousness may be developed in counties as it has been developed in a large number of cities and the county electorate will be awakened to the need of competent officials, while the increased importance of the county offices will attract able candidates. If the American county could be developed into as important a governmental unit as the English county or the French department, it is possible that it would enlist a corresponding public interest. It must not be forgotten, however, that in area, wealth, and density of population the corresponding units of rural local government in England and France are far ahead of the average American county. Furthermore, the English county is more or less a traditional and historical unit, and even the French department, though originally an intentionally arbitrary division, has more than a century of vigorous governmental activity behind it. Consequently the American county, which, except in a few of the older states of the Union has not developed a local patriotism and pride to any marked extent, labors under very distinct handicaps as

compared with the corresponding French and English areas.

If, then, the most promising line of development for the American county seems to be in the direction of an increased importance, it is essential that such development be accompanied by a corresponding efficiency in administrative machinery. Popular control of the elective officials, assisted by the application of the short-ballot principle, and such instruments of control as the initiative, referendum, and recall, and non-partisan ballots; the application of the merit system for the civil service of the county; scientific accounting, purchasing, and budget procedure; and an adequate measure of state administrative control, may serve to bring such counties as are populous enough to carry on the necessary governmental operations up to the level of the best of our city administrations. The less populous counties, especially those where the population per square mile is small, would seem clearly to be suited rather for districts of state administration than for organization as local government corporations.

There would seem to be no justification for smaller areas of local government than the county, except for the urban communities. These should be entrusted with the satisfaction of their own community needs and in the case of the more sizeable ones at least, say those from ten or fifteen thousand inhabitants up, be wholly distinct from the jurisdicition of the county. In case special local improvement districts seem desirable within the limits of a county, these should not be constituted separate local corporations as is now commonly done, but they should be administered as special assessment districts by the county government, as is now done for paving and other improvements within cities. If public undertakings re-

quire the coöperation of two or more counties, provision should be made for the joint administration of such undertakings by the counties concerned with participation by representatives of the state government to insure harmonious action.

In some such way as this the first steps may be taken toward a scientific solution of the problems of local rural government in this country, which have so far all but escaped the consideration of thoughtful students of governmental problems. The most promising lines of development in the field of city government have been indicated with sufficient emphasis and are attracting sufficient attention so that continued advance in that field may be confidently expected. With the satisfactory working out of the problem of proper city and county relations one of the remaining difficulties will be eliminated in that field. The new problems that are continually arising in connection with city government, important and difficult as they are, seem to call for no such fundamental readjustment as is indicated for rural government. In the one case as in the other, however, more active and sustained citizen interest, and more careful and accurate study and analysis are conditions precedent not only to making further advance, but even for retaining the ground that has already been won.

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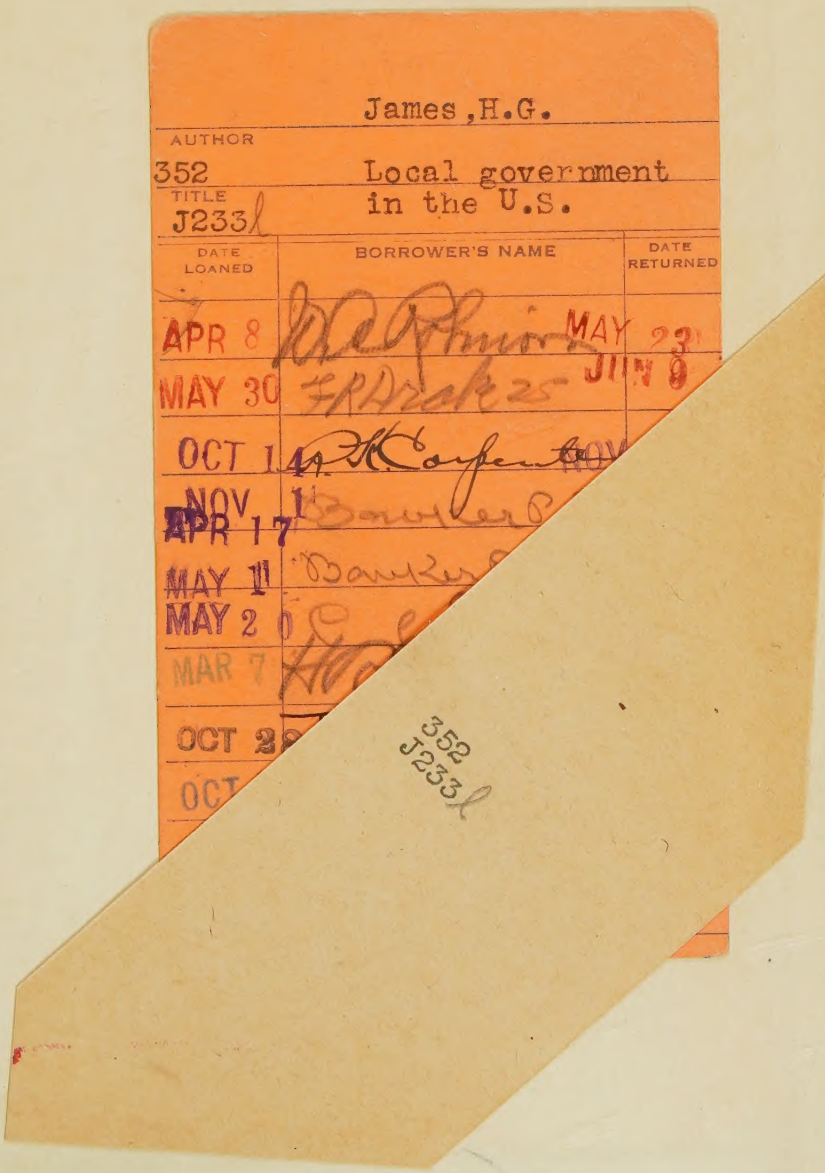
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Local government in the U.S.

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